



APPENDIX

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-478

PARKER SEAL COMPANY, *Petitioner*

- v -

PAUL CUMMINS, *Respondent*

On Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI
FILED SEPTEMBER 25, 1975
WRIT OF CERTIORARI
GRANTED MARCH 1, 1976

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

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PARKER SEAL COMPANY, Petitioner

- v -

PAUL CUMMINS, Respondent

On Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

Paul Cummins vs. Parker Seal Co.

| DATE | PROCEEDINGS |
|----------|--|
| 9-26-72 | Complaint with Prayer for permanent injunction, filed; summons and 1 copy issued and delivered to Marshal. |
| 10-4-72 | ORDER signed & filed 10-3-72 ent: At call of docket 10-2-72 case continued until further orders. Copies as noted. |
| 10-5-72 | Summons with Marshal's return filed, executed 9-28-72 |
| 10-12-72 | Answer filed |
| 12-26-72 | Stipulation of Facts filed by parties w/ exhibits. |
| 12-26-72 | Defendant's Motion for Leave to File Exhibits filed. |
| 1-15-73 | Joint Motion of Parties to Submit Action to Court for Determination on record and for time to file briefs filed. |
| 1-26-73 | ORDER signed & filed 1-24-73 ent: Defendant having moved court for permission to file certain exhibits ordered said motion |

| DATE | PROCEEDINGS |
|---------|---|
| | be sustained and exhibits tendered are hereby filed. Copies as noted. |
| 1-26-73 | ORDER signed & filed 1-24-73 ent: Parties having filed Joint Motion to submit for trial and determination on the record ordered that action be submitted on record; plaintiff given 45 days to submit brief and defendant given 45 days thereafter to file its brief; at expiration of time for filing briefs record to stand submitted. Copies as noted. |
| 3-14-73 | Plff's Brief TENDERED. |
| 4-18-73 | Defendant's Brief filed. |
| 5-1-73 | ORDER signed & filed 4-30-73 ent: At call of docket on 4-23-73 ordered that plaintiff's brief tendered on 3-14-73 be filed and case continued until further orders. Copies as noted. |
| 3-20-74 | Memorandum Opinion of Court filed. |
| 3-20-74 | JUDGMENT filed and entered: Ordered and Adjudged that plff's complaint be dismissed; judgment entered in favor of deft; deft's Motion for Allowance of attorney's fee overruled; deft. recover of plff. properly taxable costs herein. Copies as noted with Notice of Entry. |

| DATE | PROCEEDINGS |
|---------|---|
| 4-10-74 | Plaintiff's Notice of Appeal filed. Copy as noted |
| 4-10-74 | Appeal Bond filed. |
| 5-16-74 | Record forwarded to 6CCA |
| 6-5-74 | Acknowledgment by 6CCA of receipt of record filed, Their No. 74-1607 |
| 6-4-74 | <i>Certified record</i> (1 vol pleadings) filed; and cause docketed |
| 6-7-74 | Appearance of counsel for Appellant |
| 6-10-74 | Appearance of counsel for Appellee |
| 6-12-74 | Appearance of counsel for Appellant |
| 7-26-74 | Motion of Appellant for leave to file 8-1/2 x 13 size appendix (Granted) |
| 7-26-74 | Motion of Appellee to dismiss appeal (Denied 8/9/74 — Peck, J.) |
| 7-29-74 | Twenty-five copies of Brief for Appellant, with proof of service |
| 7-30-74 | Motion: Appellee's brief until 30 days after Appellant files a proper brief (Denied. Brief to be submitted not later than 9/5/74) |
| 8-1-74 | Supplement to Appellee's motion to dismiss |

| DATE | PROCEEDINGS |
|----------|--|
| 8-6-74 | Designation of record for appendix |
| 8-16-74 | Motion: Appellee's brief 25 days from and after such time as the Appellant files a proper appendix herein (denied) |
| 8-16-74 | Ten copies of Appendix |
| 9-5-74 | Twenty-five copies of Brief for Appellee, with proof of service |
| 10-1-74 | Twenty-five copies of Reply Brief for Appellant, with proof of service |
| 12-12-74 | Cause argued and submitted (Before: Phillips, Celebrezze and McCree, JJ.) [Thomas L. Hogan argued for Appellant; Bennett Clark argued for Appellee] GG-5 |
| 5-23-75 | Judgment of the District Court reversed and the case is remanded for further proceedings JJ-3 |
| 5-23-75 | Opinion by Phillips, J. [Celebrezze, J., dissenting] |
| 6-4-75 | Twenty-five copies of Brief for Rehearing with suggestion for Rehearing in banc |
| 6-5-75 | Appellant's bill of costs, with proof of service |

| DATE | PROCEEDINGS |
|---------|---|
| 7-18-75 | Order denying petition for rehearing with suggestion for rehearing in banc (Phillips, J.) [Celebrezze, J., dissenting] KK-4 |
| 7-22-75 | Motion of Appellee for stay of mandate pending application to Supreme Court for a writ of certiorari |
| 8-1-75 | Order staying mandate thirty days (Phillips, J.) LL-1 |
| 8-26-75 | Motion for additional stay of mandate pending application to Supreme Court for a writ of certiorari (Granted. Phillips, J.) |
| 9-18-75 | Motion of Appellee for a further stay of mandate to 9/27/75 (Motion Granted. Phillips, J.) |
| 10-6-75 | Notice of filing petition for certiorari 9/25/-75 (Sup.Ct.No. 75-478) |
| 3-8-76 | Certified copy of order of Supreme Court granting certiorari 3/1/76 |
| 3-22-76 | Letter requesting transmittal of record to Supreme Court |
| 3-25-76 | Record for certiorari application mailed to Supreme Court |

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

PAUL CUMMINS, PLAINTIFF

V.

PARKER SEAL COMPANY,
A Division of Parker
Hannifin Corporation, DEFENDANT

CIVIL ACTION NO. _____

COMPLAINT

1. The jurisdiction of this Court over the complaint arises pursuant to Section 706 (f) of the 1964 Civil Rights Act, 42 U.S.C. § 2000 e-5(f), and pursuant to 28 U.S.C. § 1331 (a) and 1343(3).

2. Plaintiff, Paul Cummins, is a citizen of the United States and the Commonwealth of Kentucky and resides in Mount Vernon, Kentucky. He was employed by the Defendant on December 9, 1958 and was discharged on September 3, 1971.

3. Defendant, Parker Seal Company, a Division of Parker-Hannifin Corporation, is a corporation and is qualified and is doing business in Kentucky.

4. Plaintiff is a member of the World Wide Church of God. He began attending this Church in April, 1969 and joined the church in September, 1970. This Church observes the period from sunset Friday to sunset Saturday as the Sabbath and its members honor this period by abstaining from their weekly labors and by attending religious services. This procedure is also adhered to on certain designated "Feast Days of God."

5. In July, 1970 Plaintiff informed Defendant that for religious reasons he could not longer work on his Sabbath and feast days. He advised the company that he was willing to accept a transfer or work any other scheduled or unscheduled time to make up for the time he might lose.

6. Defendant accommodated Plaintiff's religious needs by allowing him to be absent from work on his Sabbath and feast days. This accommodation began in April, 1969 and ended with Plaintiff's discharge on September 3, 1971.

7. Defendant demanded that Plaintiff work on his Sabbath or change his religion. When Plaintiff did neither, he was fired.

8. Defendant has discriminated against Plaintiff because of his religion.

9. On September 21, 1971, Plaintiff filed a charge of discrimination on the basis of religion with the United States Equal Employment Opportunity Com-

mission against Defendant. This charge was amended on June 30, 1972 (Copies are attached hereto.).

10. Plaintiff has exhausted the administrative remedies set forth in 42 U.S.C. § 2000 e-5, said remedies have proved unavailing, and permanent injunctive relief by this Court is now appropriate against Defendant. A copy of the right to sue letter issued to Plaintiff by the Equal Employment Opportunity Commission is attached hereto.

11. Plaintiff has no plain, adequate or complete remedy to redress the wrongs alleged and this suit is the only available means of securing relief. Plaintiff is now suffering and will continue to suffer irreparable injury if no relief is granted against Defendant's unlawful acts and practices as set forth herein.

WHEREFORE, Plaintiff demands:

1) That the Court advance this matter on its docket, order a speedy hearing at the earliest practicable date and cause this case to be in every way expedited.

2) That the Court declare that Defendant's policy of refusing to accommodate Plaintiff's religious beliefs is violative of federal law.

3) That a permanent injunction issue, restraining Defendant, its officers, agents and employees, and all others acting in concert with them from:

- (a) Discriminating against Plaintiff, directly or indirectly, because of religion
 - (b) Refusing to reasonably accommodate Plaintiff's religious beliefs.
- 4) That a permanent injunction issue, directing Defendant to:
- (a) Reinstate Plaintiff with all benefits, including but not limited to, back pay, increase in remuneration, vacation rights, sick leave and pension rights to which he would have been entitled had he not been wrongfully discharged.
 - (b) Reasonably accommodate, without undue hardship, the religious beliefs of Plaintiff by allowing him to abstain from working on his Sabbath or feast days.
- 5) That the Court grant Plaintiff such affirmative relief as may be appropriate to carry out the public policy as set forth in the 1964 Civil Rights Act, 42 U.S.C. §2000 e, *et seq.*
- 6) That the Court allow plaintiff his costs herein, including reasonable attorney's fees in accordance with 42 U.S.C. § 2000 3-5 (k).
- 7) That the Court grant all other relief to which the Plaintiff appears to be entitled.

JAMES C. HICKEY
EWEN, MACKENZIE AND
PEDEN

2100 Commonwealth Building
Louisville, Kentucky 40202

THOMAS L. HOGAN
205 South Fourth Street
Louisville, Kentucky 40202
583-0972

Attorneys for Plaintiff

BY: /s/ Thomas C. Hogan

* * * * *

SEP 20, 1971

The Equal Employment
Opp. Commission
1800 G. Street N.W.
Washington, D.C. 20506

Mt. Vernon, Ky.
Sept. 15, 1971

Sirs: I have worked for *Parker Seal Co., Berea, Ky.*
for past 12 years & 8 mos.

About 2 yrs. ago I started observing the Sabbath,
every thing was OK with my company.

Just recently I was told either work on the Sabbath
or else, I refused & was fired.

Can you please tell me if this is discrimination & if
so what can I do about it.

Thanks
Paul Cummins
Mt. Vernon, Ky.
40456

RECEIVED
E.E.O.C.
CL. REG. OFFICE
SEP 21 1971

AM PM
7.8.9.10.11.12.1.2.3.4.5.6

* * * * *

(If you have a complaint, fill in this form, and mail
it to the Equal Employment Opportunity Commis-
sion's Regional Office in your area. In most cases,
a charge must be filed with the EEOC within a
specified time after the discriminatory act took
place. IT IS THEREFORE IMPORTANT TO FILE
YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of
discrimination based on RACE, COLOR, RE-
LIGION, SEX, or NATIONAL ORIGIN.

(PLEASE PRINT OR TYPE)

Case File No. TME2-0208

1. Your Name (Mr.) Paul Cummins Phone
Number 256-2326 Street Address P. O. Box 85
City Mt. Vernon State Kentucky
Zip Code 40456

2. WAS THE DISCRIMINATION BECAUSE
OF: (Please check one)

Race or Color ☐ Religious Creed ☒
National Origin ☐ Sex ☐

3. Who discriminated against you? Give the
name and address of the employer, labor organiza-
tion, employment agency and/or apprenticeship com-
mittee. If more than one, list all.

Name Parker Seal Company, Division of
Parker-Hannifin Corporation

Street address Lewis and Maple Streets
City Berea State Kentucky

Zip Code 40303

AND (other parties if any) _____

4. Have you filed this charge with a state or local government agency?

Yes ☒ When 10 1 71 No ☐

5. If your charge is against a company or a union, how many employees or members?

Under 25 ☐ Over 25 ☒

6. The most recent date on which this discrimination took place: Month September
Day 3 Year 1971

7. Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

I had worked for Parker Seal Company for 12 years and 8 months prior to my discharge on September 3, 1971. Approximately two years before my discharge, I affiliated with the World Wide Church of God and following their religious tenets which included abstention from common labor on the Sabbath. The Sabbath is the period from sundown Friday to sundown Saturday.

The Company accommodated my religious beliefs for this two year period. Then in August of 1971, the plant manager informed me that the Company would no longer accommodate me and

ordered me to be available for work on my Sabbath. I refused and on September 3, 1971, I was terminated for so refusing. I charge this termination constitutes religious discrimination.

8. I swear or affirm that I have read the above charge and that it is true to the best of knowledge, information and belief.

Date 28 June 1972 /s/ Paul Cummins

Subscribed and sworn to before me this 28th day of June 1972

/s/ Robert E. Robinson

Robert E. Robinson

My Commission Expires 19 May 1975
Notary Public

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

FORM APP.: BUR. OF BUDGET—No. 124-R001

FORM EEOC-5 (REV. 7-)

* * * * *

AREA CODE 901
534-3591

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
46 North Third Street, Suite 1004
Memphis, Tennessee 38103

DISTRICT OFFICE

Charge No. TME2-0208

| | | |
|----------------------|-----|-------------------------|
| Mr. Paul Cummins | | Parker Seal Company |
| P. O. Box 85 | vs. | Division of Parker- |
| Mt. Vernon, Kentucky | | Hannifin Corporation |
| | | Lewis and Maple Streets |
| | | Berea, Kentucky |

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

Pursuant to Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, you are hereby notified that you may within ninety (90) days of receipt of this communication, institute a civil action in the appropriate Federal District Court. If you are unable to retain an attorney, the Federal District Court is authorized in its discretion to appoint an attorney to represent you and to authorize commencement of the suit without payment of fees, costs or security. If you decide to institute suit and find you need assistance, you may take this letter,

along with any correspondence you have received from the Commission to the Clerk of the Federal District Court nearest to the place where the alleged discrimination occurred, and request that a Federal District Judge appoint counsel to represent you. Should you decide to sue, please have your attorney complete the enclosed post card as soon as possible.

| | |
|-----------------------------|-------------------|
| <u>/s/ Charles A. Dixon</u> | <u>SEP 5 1972</u> |
| Charles A. Dixon | Date |
| Director | |

Enclosure

CERTIFIED MAIL — RETURN
RECEIPT REQUESTED

* * * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

PAUL CUMMINS, PLAINTIFF

VS. ANSWER

PARKER SEAL COMPANY,
A Division of Parker
Hannifin Corporation DEFENDANT

CIVIL ACTION NO. 2432

* * * * *

Comes the defendant, Parker Seal Company,
and for its Answer to the Complaint of the plaintiff,
Paul Cummins, states as follows:

FIRST DEFENSE

The defendant, Parker Seal Company, admits so much of paragraph 2 of the plaintiff's complaint as alleges that the plaintiff was employed by the defendant on December 9, 1958 and terminated his employment with the defendant on September 3, 1971, and the defendant admits the allegations contained in paragraph 3 of the plaintiff's complaint.

SECOND DEFENSE

The defendant, Parker Seal Company, states that it is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in the first sentence of the second paragraph of the plaintiff's complaint or in paragraphs 4, 6, and 9 of the plaintiff's complaint.

THIRD DEFENSE

The defendant, Parker Seal Company, denies each and every allegation stated or implied in paragraphs 1, 5, 7, 8, 10, and 11 of the plaintiff's complaint and denies each and every other allegation contained in the plaintiff's complaint not specifically mentioned in the First Defense and Second Defense contained hereinabove.

FOURTH DEFENSE

The complaint of the plaintiff fails to state a claim on which relief may be granted.

FIFTH DEFENSE

The plaintiff herein, in an action styled identically to the within styled action and while represented by competent legal counsel, filed a complaint of discrimination with the Kentucky Commission on Human Rights identical in substance to the allegations set forth in the plaintiff's

complaint herein; thereafter the plaintiff's complaint of discrimination was tried in a full evidentiary proceeding before the Kentucky Commission on Human Rights at which hearing witnesses were called on behalf of the plaintiff and testified under oath; thereafter briefs were submitted by counsel on behalf of the plaintiff and the defendant; thereafter the Kentucky Commission on Human Rights acting through its duly constituted chairman rendered its Finding of Fact, Conclusions of Law and Order on April 12, 1971, a copy of which is annexed hereto and made a part hereof as Exhibit A; said order dismissing the complaint against this defendant and finding that the defendant, Parker Seal Company, had not discriminated against the plaintiff and further finding that to require the defendant to accommodate the religious beliefs and practices of the plaintiff would work an undue hardship on this defendant, and said Order became final on May 12, 1971; and the parties to the within action are identical and in identical postures and the law sought to be applied herein is identical to that applied in the matter before the Kentucky Commission on Human Rights and the plaintiff herein makes no claim and seeks no relief not available to him or previously sought in the aforesaid action before the Kentucky Commission on Human Rights and the state remedy in the prior action was identical to and as fully adequate as the Federal

remedy sought to be applied herein, the remedy provided for the plaintiff by the Kentucky Civil Rights Acts, KRS 344.010 Et. Seq., a copy of which is annexed as Exhibit "B" were employed by the plaintiff and produced speedy results, and for these reasons this Court must apply the rule of res judicata and/or collateral estoppel and/or issue preclusion to the final order of the Kentucky Commission on Human Rights and the plaintiff's claim herein is barred and this Court must dismiss and hold for naught the complaint of the plaintiff herein.

SIXTH DEFENSE

The defendant, Parker Seal Company, reaffirms and reiterates the allegations contained in Defense No. 5 hereinabove and states that this Court must give Full Faith and Credit to the Findings of Fact, Conclusions of law and Order of the Kentucky Commission on Human Rights, as contained in Exhibit A hereto.

SEVENTH DEFENSE

The defendant, Parker Seal Company, states that so much of the 1964 Civil Rights Act, as amended, 42 U.S.C. Section 2000e Et. Seq., and other Federal statutes and administrative decisions and regulations upon which plaintiff relies and claims and seeks to enforce against the defendant herein,

which Act or Statute or Decision or Regulation requires that the defendant, Parker Seal Company, accommodate the plaintiff's religious beliefs and practices are unconstitutional, null and void as applied to this defendant for the reason that the said Act, Statutes, Decisions and Regulations have no secular purpose and/or have as its or their primary purpose and/or effect the advancement and support of religion in general, and the advancement and support of the religious sect and tenets and dogmas of the religious faith or denomination of the plaintiff in particular; and/or enforcement and/or application against this defendant of the Act, Statutes or Decisions or Regulations under which the plaintiff claims will foster, encourage, and require extensive and excessive involvement, control and supervision by the United States, its agents and employees in and with religion in general, and in and with the religious sect, tenets and dogma of the religious faith or denomination to which the plaintiff adheres, in particular, and the application and enforcement of the said Act, Statute, Decision or Regulation against this defendant will have the direct effect of injuriously affecting the manufacturing business of the defendant.

EIGHTH DEFENSE

So much of the 1964 Civil Rights Act, as amended, 42 U.S.C. Section 2000e Et. Seq., under

which the plaintiff is making claim herein, is unconstitutional and null and void for the reason that said Act violates Article I, Section 9 of the Constitution of the United States in that said Act is or has the effect of an ex post facto law passed by Congress, and the application and enforcement of the said Act against this defendant will have the direct effect of injuriously affecting the manufacturing business of the defendant.

NINTH DEFENSE

So much of the 1964 Civil Rights Act, as amended, 42 U.S.C. Section 2000e Et. Seq., under which the plaintiff is making claim herein, is unconstitutional and null and void for the reason that that portion of the said Act under which the plaintiff is claiming is too vague and ambiguous to meet the Constitutional requirement of due process of law, as applied to this defendant, and the application and enforcement of the said Act against this defendant will have the direct effect of injuriously affecting the manufacturing business of the defendant.

TENTH DEFENSE

So much of the 1964 Civil Rights Act, as amended, 42 U.S.C. Section 2000e Et. Seq., as the plaintiff is making claim under herein, is arbitrary and unreasonably discriminatory for the reason that it violates the equal protection, uniformity and due

process of law requirements of the Constitution of the United States, as applied to this defendant.

ELEVENTH DEFENSE

The defendant, Parker Seal Company, specifically denies that it, at any time, has ever discriminated against the plaintiff, Paul Cummins, on account of his religion, or for any other reason and this defendant further specifically denies that it is under any obligation to discriminate in favor of the plaintiff, Paul Cummins, which would include making accommodation for the plaintiff because of the plaintiff's religion or to assist the plaintiff in the practice of his religion, and application of the Civil Rights Act of 1964, as amended, 42, U.S.C. 2000e Et. Seq., as demanded herein, would work an undue hardship on the conduct of the plaintiff's business.

WHEREFORE, the defendant, Parker Seal Company, demands:

1. That the complaint of the plaintiff be dismissed and held for naught:

2. That the Court declare so much of the Civil Rights Act of 1964, as amended, and any other Federal Statutes, Decisions and Regulations which require that the defendant discriminate in favor of the plaintiff in employing the plaintiff and making work assignments because of the plaintiff's religion under which this plaintiff is claiming against this defendant

to be in violation of the Constitution of the United States and null and void and unenforcible against the defendant, Parker Seal Company;

3. That the Court allow the defendant its costs expended herein, including reasonable attorneys fees in accordance with the provisions of the 1964 Civil Rights Act, 42 U.S.C. Section 2000e-5 (k);

4. That the Court grant the defendant, Parker Seal Company, all other relief to which the defendant appears to be entitled.

STOLL, KEENON & PARK
310 First National Bank Bldg.
Lexington, Kentucky 40507

BY /s/ Bennett Clark
Attorneys for Defendant,
Parker Seal Company

This is to certify that the within Answer has been served upon the plaintiff by mailing a true copy to his attorneys of record, Mr. James C. Hickey, Ewen, MacKenzie & Peden, 2100 Commonwealth Bldg., Louisville, Kentucky 40202, and Mr. Thomas

L. Hogan, 205 South Fourth Street, Louisville,
Kentucky 40202, on this the 12 day of October, 1972.

BY /s/ Bennett Clark
Attorney for Defendant,
Parker Seal Company

* * * * *

[1]

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY COMMISSION
ON HUMAN RIGHTS
Complaint No. 231-E

PAUL CUMMINS COMPLAINTANT

VS: HEARING

PARKER SEAL COMPANY, DIVISION
OF PARKER-HANNIFIN
CORPORATION RESPONDENT

* * * * *

The hearing in the above-styled matter was held before the Kentucky Commission on Human Rights on Friday, March 3, 1972, at the Madison County Courthouse, Community Room, Richmond, Kentucky, beginning at the hour of 12:30 P.M., before me, Betty J. Dobson, Notary Public, State of Kentucky at Large.

PRESIDING HEARING COMMISSIONER: Mr.
James A. Crumlin

Commission Members: Mrs. Irving Rosenbaum
Mrs. Belle Smith
Mr. Fred Anhouse

Mr. E. P. Wilson
 Mr. Vernon Johnson
 Mr. A. R. Lasley
 Rev. C. L. Finch

APPEARANCES:

Mr. Thomas L. Hogan
 Attorney for the Complainant
 Stoll, Kennon & Park
 Mr. Bennett Clark
 Appearing,
 Attorney for the Respondent

[2]

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Certificate

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[3]

MR. BENNETT CLARK: Your Honor, before the hearing opens I would like to ask that there be a separation of witnesses that are to testify.

MR. JAMES A. CRUMLIN: Are we ready now on both sides?

MR. BENNETT CLARK: Yes sir.

MR. JAMES A. CRUMLIN: My name is James A. Crumlin and I am Acting Chairman of the Human Rights Commission and as such will be the presiding officer together with the other commission members. Each of us is supposed to have a plate placed somewhere within the vicinity of being in front of us so that this might help us in time identify ourselves. We have the case before us today of Mr. Paul Cummins who has filed a complaint in this matter. This complaint has been filed against the Parker Seal Company, Division of Parker-Hannifin Corporation of Berea, Kentucky. Where does Mr. Cummins live?

[4]

MR. THOMAS L. HOGAN: Mt. Vernon.

MR. JAMES A. CRUMLIN: Mt. Vernon. And there has been a call for an order of separation. I

think in order to make certain that everybody is satisfied and everybody is happy about this, we're going to ask all of the witnesses that are to testify for the complainant to stand. Now, Mr. Hogan, do you recognize all of these witnesses, these seven (7), as being yours?

MR. THOMAS L. HOGAN: Yes sir.

MR. JAMES A. CRUMLIN: There are none others?

MR. THOMAS L. HOGAN: Is Mr. Haddock here?

MR. BENNETT CLARK: No, we have called Mr. Haddock and Mr. Roy Kuhn who will be testifying in behalf of the Company. They are coming from their offices in Lexington and they're not here yet. They will be here by 2:30.

[5]

MR. JAMES A. CRUMLIN: Do you have other witnesses?

MR. THOMAS L. HOGAN: The only other, Mr. Ebendorf will be here and not testify but I talked to Mr. Clark about that and he agreed that he could remain with us.

MR. JAMES A. CRUMLIN: Is there a place convenient for all of the witnesses except for Mr.

Ebendorf and Paul Cummins that they might go and separate them from the hearing?

MR. BENNETT CLARK: We can sit them on chairs in the hall, but that's probably the best we can do.

MR. JAMES A. CRUMLIN: Now, you that are standing, except for the names of the persons we just mentioned, will you please retire to the hall? They tell us there are chairs out there — not — that's a good idea to take your chairs with you. Now, Mr. Cummins, will you pull up somewhere near there so we can see you and identify each other? Now, will the witnesses here [6] for Parker Seal Company please stand?

MR. BENNETT CLARK: Your Honor, the only witnesses that we propose to call are Mr. Dutch Haddock and Mr. Roy Kuhn. And they were the two (2) people that I mentioned that have been called and are coming from Lexington. And they will be here by 2:30.

MR. JAMES A. CRUMLIN: Then will you, sir, be responsible for making certain that no testimony is being given at the time that they might come in?

MR. BENNETT CLARK: Yes sir, I'll do that.

MR. JAMES A. CRUMLIN: Then are we otherwise ready?

MR. BENNETT CLARK: Ready.

MR. THOMAS L. HOGAN: Yes sir.

MR. JAMES A. CRUMLIN: We would like for the stenographer to express [7] there in the official record, and I believe that each of you have copies of the documents that I'm about to enumerate at this point. If not, please state so. We have the original complaint which was subscribed and sworn to on the 28th day of September, 1971 at Louisville, Kentucky. Do you have a copy of that?

MR. BENNETT CLARK: Yes sir, I do.

MR. JAMES A. CRUMLIN: It is a two (2) page document and we have it here, from the Clerk for you here. We also have notice of the hearing which is dated the 29th day of November, 1971. Mr. Clark, do you have a copy of that?

MR. BENNETT CLARK: Yes sir, we do.

MR. JAMES A. CRUMLIN: The next we have, the certified letter transmitting notice of hearing to the respondent. Do you have a copy of that, sir?

[8]

MR. BENNETT CLARK: Yes sir, we do.

MR. JAMES A. CRUMLIN: And you acknowledged having it?

MR. BENNETT CLARK: Yes sir.

MR. JAMES A. CRUMLIN: We have a certified letter transmitting notice of hearing to the complainant, do you have that?

MR. BENNETT CLARK: Yes sir.

MR. JAMES A. CRUMLIN: Lastly we have the answer of the respondent which is filed and it is certified that a copy was served on the Commission on the 6th day of December, 1971. If I may back up for a moment, I'd like to identify the date of the certified letter transmitting notice of hearing to the respondent, and show the date of that to be November the 29th, 1971 and on the same date the certified letter transmitting notice of hearing was issued to the complainant. Gentlemen, do we have any motions to be made at this time?

[9]

MR. BENNETT CLARK: Your Honor, the only motion that I might propose for motion, as such, and I think that essentially it's incorporated in our answer, is that the charge which has been lodged against the Company by the Human Rights Commission be dismissed for the reason that the complaint, I do not believe, states the cause of action under the laws that now stand in this Commonwealth. And I move that the complaint be dismissed. I simply want to make that for the record.

MR. JAMES A. CRUMLIN: Do you have any comment on that?

MR. THOMAS L. HOGAN: I think his answer and motion to dismiss goes to the merit of the case as well as basically denying the truth of the allegation of the complainant and the factual statements made. And the Commission advised holding in abeyance their decision on that until after a full hearing in the case.

MR. JAMES A. CRUMLIN: I believe it is the common consensus of the opinion [10] of the Commission members we will withhold any decision on your motion at this time.

MR. BENNETT CLARK: Thank you.

MR. JAMES A. CRUMLIN: Mr. Hogan, will you please state for us the position that you intend to prove for us, are we having any stipulated agreements?

MR. THOMAS L. HOGAN: Well, the thing I have, Mr. Crumlin, is a list which I would like to read into the record. I've shown it to Mr. Clark. The dates involved in the claim and setting up the jurisdiction. So we agreed to stipulate that the Commission does have jurisdiction in the case. These are the dates the statute required for certain things done.

MR. JAMES A. CRUMLIN: Any objection to that?

MR. BENNETT CLARK: No sir. If I may suggest, just give that to the Court Reporter and let her copy it in.

MR. JAMES A. CRUMLIN: Will each of you sign it?

[11]

MR. BENNETT CLARK: Alright, sir.

MR. THOMAS L. HOGAN: You won't be able to read my signature but I'll sign it.

MR. JAMES A. CRUMLIN: That's alright, just as long as we can identify it as being you.

(Both attorneys, Mr. Bennett Clark and Mr. Thomas L. Hogan sign the case chronology to be copied into the record.)

CASE CHRONOLOGY

| | |
|----------|---|
| 9-3-71 | Complainant discharged |
| 9-28-71 | Complaint was signed and sworn |
| 10-1-71 | Complaint filed with KCHR in its Frankfort office |
| 10-5-71 | Complaint served on R. by mail |
| 10-5-71 | Finding of probable cause made |
| 10-5-71 | Conciliation attempted |
| 11-29-71 | Conciliation attempted |

11-29-71 Case set for hearing R. Complainant and A.G. served with Notice of Hearing.

[12]

MR. THOMAS L. HOGAN: If it please the Commission, I just have a few opening statements I'd like to make so we can get to the facts of this case. This is an unusual complaint situation before the Commission involving a religious discrimination complaint. Paul Cummins is a member of the World Wide Church of God and in that particular sect the Sabbath is observed from Friday sundown until Saturday sundown. Mr. Cummins' discharge came out of his refusal to work on Saturday. And it is our position that the fact of the company's policy of requiring Mr. Cummins to work on Saturday is discriminating against him because of his religion. I think we're all aware there is no intent provision in the statute. We're not contending that the company intended to discriminate against Mr. Cummins or anyone else of his religion by having this Saturday working policy. I think the purpose of the Civil Rights legislation is to protect the classes of the people, be they blacks or be they members of certain religious sects. And the policy, even though its applied uniformly, if the effects of that is to discriminate against a certain sect or [13] class of persons and that is, legally and under our law since

the 1964 Federal Civil Rights Act, discrimination. What the complainant contends is that there is a burden upon the company to accommodate the religious beliefs of their employees. They are somewhat guided by that under the Equal Employment Opportunity Religious Discrimination Guidelines.

MR. JAMES A. CRUMLIN: Mr. Hogan, may I interrupt you a minute? I think that what we want here and now is some factual statements and then we'll get to the legal point of it later.

MR. THOMAS L. HOGAN: Well, I think, if you please, Mr. Crumlin, the facts really are not in dispute.

MR. JAMES A. CRUMLIN: Do we have that in any stipulation?

MR. THOMAS L. HOGAN: Well, I'd say the fact is, they are somewhat. I'm sure Mr. Clark is going to dispute exactly that this was the only reason that Mr. Cummins was discharged. But I think it would give the [14] Commission a better overall view as the testimony were given if they had some idea exactly why some particular testimony is being given. Because basically what we will try to elicit for the facts is that Mr. Cummins was discharged because he would not work on Saturday and that the failure of the company to accommodate him is religious discrimination. And that there is not

an undue hardship on the company to accommodate Mr. Cummins because of his religious beliefs. And that basically is what we will be attempting to prove, that there is a burden on a company to accommodate a person's religious beliefs and this burden was not met by the company in this particular case.

MR. JAMES A. CRUMLIN: Do you have anything to say, Mr. Clark?

MR. BENNETT CLARK: If it please the Commission, Mr. Crumlin, I fear that I'm going to fall in the same fault that Mr. Hogan may have, but I think also that since the Commission in this case has basically a legal position both of the Commission and the company on this —

[15]

MR. JAMES A. CRUMLIN: If I understand, what both of you are saying is that you do not deny and it is generally admitted on both sides that Mr. Cummins was discharged because of his religion?

MR. BENNETT CLARK: No sir, that is not correct. Simply stated, our answer is that we did not discharge Mr. Cummins because of his religion.

MR. JAMES A. CRUMLIN: That's the question that he has here.

MR. BENNETT CLARK: We did not discriminate against Mr. Cummins because of his religion or for any other reason. We simply did not discriminate against Mr. Cummins. And, of course, this case is being brought under the Kentucky Civil Rights Act of 1966 — 68 and which, I believe that the Commission is aware, follows, at least in pertinent part to this situation, follows the Civil Rights Act of 1964, and Title Seven (7) specifically, which our Federal Government has adopted. It has been our understanding, through numerous conferences with Mr. Ebendorf and as Mr. Hogan has just stated, that the Commission [16] has accepted as the proper interpretation of the law of this Commonwealth that the duty not to discriminate on religious grounds required by Section 344.040 of the Kentucky Revised Statutes, which is the Kentucky Civil Rights Act, includes an obligation on the part of the employer to make a reasonable accommodation for the religious beliefs of employees and prospective employees where such accommodations can be made without undue hardship in the conduct of the employer's business. And, as I believe that Mr. Hogan again stated, I don't think he carried through with it, this interpretation follows the guidelines of the Equal Employment Opportunity Commission, the guideline which was promulgated on July 10, 1967 and carries Guideline Part Number 1605.1. And this is the same interpretation, that is,

this Equal Employment Opportunity Commission interpretation which I mentioned is the same interpretation which apparently has been followed by this Commission in the only two (2) previous religious discrimination cases which have been filed with the Commission. I believe that those cases are McCutchin and Grimm vs. Two Turns, [17] Division of Chemtron and Phelps vs. Trane Company, which is a case I believe emanating from Somerset, am I correct in that Mr. Ebendorf?

MR. THOMAS A. EBENDORF: That's correct.

MR. BENNETT CLARK: Simply stated, the Company's position, and I believe this is the fact of this case, is that Mr. Cummins' employment with Parker Seal was terminated because — we admit that we terminated Mr. Cummins' employment but it was for a cause other than religion, this cause was solely dominated by certain business considerations and the failure of Mr. Cummins to carry out certain plant regulations and to work scheduled work. Now, Mr. Cummins was an exempt employee, he was a foreman. As a matter of fact, he was one of the higher foremen at the Parker Seal Company. He was an exempt employee which meant that his work did not fall under the Wage and Hour Provisions or the Fair Labor Standards Act. That is, he did not punch a time clock, he didn't punch in and punch out. He was not a member of [18] the union. His work required that he be on call whenever he was required

to work in his Department, which was the Banbury Department, which is the keystone of this operation because that's where they have the recipies and that's where they mix the rubber that makes the product that Parker Seal sells. And without the Banbury the whole business collapses. Now, his responsibility was that when his people worked that he worked. And the only time that any employee at Parker Seal was called to work was when business demanded, they don't work people for reasons when business does not demand it. The only reason that this company ever worked on Saturday was because that their orders for goods demanded it. Because, as we will point out through certain union contracts, this company is required to pay time and a half pay for employees who work on Saturday. And I think obviously the company is not going to pay time and a half pay if they don't have to. And our case is simply that we discharged Mr. Cummins because he refused to perform the work that was scheduled for him which he'd performed for years and religion had nothing to do with this. That's all, Your Honor.

[19]

MR. THOMAS L. HOGAN: At this time instead of starting with Mr. Cummins I want to start with Mr. Kelly Barfield. And I've discussed it

with Mr. Clark. Mr. Barfield is the Minister at the World Wide Church of God.

MR. JAMES A. CRUMLIN: Mr. Clark, is that agreeable?

MR. BENNETT CLARK: Yes sir.

MR. JAMES A. CRUMLIN: Let the record show that it is agreed that Reverend Garfield may be called out of turn.

EVIDENCE FOR THE CLAIMANT

The witness, Reverend Kelly H. Barfield, affirms his testimony to be the truth, the whole truth and nothing but the truth.

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. Please state your full name, Mr. Barfield?

A., Kelly H. Barfield.

Q-2. And your address, please?

A., 3475 Castleton Way North, Lexington.

[20]

Q-3. And what is your occupation?

A., Minister.

Q-4. Of the?

A., World Wide Church of God.

Q-5. And that's located in?

A., Lexington.

Q-6. And is Mr. Paul Cummins one of your parishioners?

A., Yes.

Q-7. How long has he been so?

A., Since September of 70 as a member.

Q-8. And could you just explain to the Commission exactly what the belief is of the World Wide Church of God in relation to the observance of the Sabbath?

A., Yes, it is the belief, as stated in Article Twelve (12) in the constitution and by-laws of the church, that for a person to remain in good standing with the church that it's necessary that he observe the Sabbath from sundown Friday until sundown Saturday.

Q-9. Now, when you say observe the Sabbath, exactly what does that mean?

A., That would mean refraining from the normal labor and work during the week and observe that as a day of rest.

Q-10. What is permitted, what type of labor or what type [21] of activity is permitted on the Sabbath?

A., No type labor as far as normal work that a man might do during the regular six (6) days of the week. That's a day of rest and a person then on that day will be with his family as well as church attendance.

Q-11. Is there any type of entertainment or any type of other, say, sports activities allowed on the Sabbath?

A., No, basically it would be church attendance on that day.

Q-12. And has Mr. Cummins been a regular attender at your church?

A., Yes.

Q-13. Since he joined?

A., Since he joined and even before, for approximately two (2) years he came with his wife and family.

Q-14. What is the effect of someone who is a member of the church but then, say, continues to work on the Sabbath?

A., That they no longer be in good standing with the church.

Q-15. You say that Mr. Cummins was attending church before he actually became a member?

A., Right.

[22]

Q-16. When did he actually start attending?

A., I don't know the exact date, I wasn't here at the time. I was transferred here from Arkansas in July of 1969. He was attending before that.

Q-17. Could you just, to give the Commission a better understanding of the church, give them some idea of what the other beliefs and the other tenets are of the church?

A., Well, we also believe in the observance of seven (7) annual holy days that come during the year that are basically the same as the Jewish holy days. And we believe in the observance of those and again for a member to maintain good standing with the church that it is necessary then that he observe those days during the year.

Q-18. And when you say observe, this would be observed the same as the Sabbath is observed?

A., The same as the Sabbath, that he would refrain from the normal work.

Q-19. I want to show the Commission a list of the Feast Days and ask Mr. Barfield if these are the days that he's referring to?

A., Right, it gives the date of the days all the way through 1977. These are the days that were referred [23] other than the weekly Sabbath.

MR. THOMAS L. HOGAN: Unless there's any objection I'd like to enter this as Exhibit I, please.

MR. BENNETT CLARK: No objection.

MR. JAMES A. CRUMLIN: Alright let it be entered as Complainant Exhibit I.

Q-20. I notice on the one listing Passover it has "observed the previous evening" does that mean that that actual date is not observed?

A., That the actual date is not a regular annual Sabbath.

Q-21. So that, in other words, a person could work then on that day?

A., On that day, yes, but the day following is one of the annual Sabbaths.

Q-22. What type of services do you have as far as when are they, the actual church services on a normal Sabbath?

A., They're held in Lexington in the afternoon. That's normal service where we have the opening prayer, we have usually a sermonette of approximately twelve (12) [24] minutes and then any announcements, and further songs and then a full sermon, basically an hour to an hour and a half, and then the closing prayer. So the services usually last two (2) hours.

Q-23. So I think we could say then that the Sabbath is spent in either prayer or meditation or related subjects?

A., Right.

MR. THOMAS L. HOGAN: I believe that's all the questions I have.

INTERROGATION BY MR. BENNETT CLARK.

Q-1. Reverend Barfield, how long have you been a Minister of the World Wide Church of God?

A., As an Ordained Minister since 1961.

Q-2. How many different congregations have you had?

A., As far as serving, eight (8) or nine (9) services. Nine (9) different churches or congregations.

Q-3. I believe that you have stated, just for the record, that you do know Mr. Paul Cummins who is the complaining party in this case?

A., Yes.

Q-4. And how long have you known him?

[25]

A., Since 69.

Q-5. Does Mr. Cummins have what you would consider a very steady record of attendance with your church since 1969?

A., Yes.

Q-6. And this has been on what days that he attended?

A., On all Sabbaths as well as the seven (7) annual Sabbaths.

Q-7. That is, all Sabbaths being from sunset on Friday until sunset on Saturday?

A., Right, he has attended services on that day.

Q-8. And in addition the periods which are set forth, as what I believe has been shown and marked Exhibit I, is that what you're saying, sir?

A., Right.

Q-9. And this has been for what years now that he's maintained a steady record?

A., Since 69, since I've known him.

Q-10. What is the size of the congregation where Mr. Cummins attends church?

A., Approximately four hundred (400).

Q-11. Four hundred (400). Aside from attending church during your Sabbath periods did Mr. Cummins take any sort of active part in other religious activities of your church?

[26]

A., Yes, he's a member of the speech club that I conduct which is for leadership training. He also participates in the social activities of basketball and teenage activities, young adult activities.

Q-12. When does the speech club meet?

A., It meets on Sunday night.

Q-13. In your opinion and based upon your position as a Minister of the World Wide Church of God, and specifically we're concerned now with Mr. Paul Cummins, do you believe that it's important to your Lexington congregation and for the denomination of your church as a whole that the Parker Seal Company accommodate Mr. Cummins and permit him to remain free from any work responsibilities on the Sabbath period or on any of the holy days? Do I make myself clear?

WITNESS: Do you mean in connection with the company?

MR. BENNETT CLARK: No, I'm asking about his religion, do you think that it's important to his religion?

MR. THOMAS L. HOGAN: I object, the importance would be to Mr. Cummins [27] personally not to the —

MR. BENNETT CLARK: Well, I think that this minister has qualified himself as an expert in the practice of the faith of the World Wide Church of God. I think that he can make comments based upon his observance of Mr. Cummins, of Mr. Cummins' activities in the church and whether or not he believes Mr. Cummins is an active and responsible member of his church.

MR. THOMAS L. HOGAN: If I understood the question, you're asking him —

MR. JAMES A. CRUMLIN: Objection overruled.

Q-14. Do you want me to repeat the question, would that help you?

A., Right.

Q-15. I'm asking you of your opinion and this is based upon your years as a minister of the World Wide Church of God and your observations of the members of the congregations of which you've been a minister and your observations of Mr. Paul Cummins, do you [28] believe that it is important, not only to Mr. Cummins, but also to your congregation of which he is a member and apparently an active part, that this company accommodate him and let him remain free from work responsibilities during the Sabbath period and during the holy days that your church celebrates which occur during the year?

A., I feel this, that a man should be given a right as a member to labor and work in a company, whether Parker Seal or any other company, as long as it doesn't detriment the company for him to remain in good standing with the church.

Q-16. I'm asking you about your congregation, not about the company?

A., And it's beneficial with the congregation with him to maintain a job, to actually be active in the furtherance of the work financially.

Q-17. Is it important to the congregation that he be present at church on Saturdays — pardon me, the Sabbath period and during the holy days?

A., Yes. It is important that all members be there.

Q-18. Do you think, again based upon your background as a minister of this church and your observations of Mr. Cummins, do you think that his continued presence, [29] and I'm looking now into the future, that his continued presence at your church's services on the Sabbath period and holy days will serve to strengthen your church and do you think that it will help to move forward what you perceive to be your church's mission in the world?

A., Certainly.

Q-19. I guess what I'm asking you is this, do you think that it's important that Mr. Cummins be accommodated and be permitted to continue with his work in your church?

A., Right, every member is important.

Q-20. I brought with me a calendar, which I will be glad to share with the Commission members, I ripped out from my old notebook in the office, but I want to go over with you just for the period of

1971 the actual days of the week on which the holy days listed on the chart recorded as Exhibit I have fallen. The first date — would you like a copy of this, would it help you if you had a copy of this?

A., No, I think I remember the dates on ours.

Q-21. This is 1971 and I'm asking you specifically concerning the Annual Feast Days of God. I believe the first one was March the 27th and that would have fallen on [30] a Saturday? I'll be glad to present my calendar to you so that you might —

A., Well, I have one here.

Q-22. Well, I'm taking the days of the week off of my calendar here. The second one is the Passover period of April the 9th, I believe that would have fallen on Friday, the second Friday in April of 1971? Do you remember if these were the days on which you —

A., I don't remember the exact days, no.

Q-22. Alright, well let me just read them into the record then. April 10th, and I understand this is through the 16th, that is, that entire period is considered a holy day period?

A., No, just the first and last day.

Q-23. Oh, alright, excuse me. Alright, then April 10th would be the second Saturday in April of 1971 and April the 16th would be the third Friday in April of 1971?

A., Right.

Q-24. The next one is Pentecost, which is May the 31st which is the last Monday in May of 1971. The next is the Feast of Trumpets, which is September 20th, which is the third Monday in September of 1971. The next is the Day of Atonement, which is Wednesday, [31] September the 29th?

A., Right.

Q-25. The last Wednesday in September of 1971. The Feast of Tabernacles, October 4-10. October 4 is a Monday, the first Monday in October of 1971. And October the 10th is the second Sunday of 1971. The Last Great Day is October the 11th, and that is the second Monday in October of 1971?

A., Right.

Q-26. Now, it's your opinion as Minister of this church that Mr. Cummins' employer should accommodate his religion and permit him to be absent from work and relieved of all work responsibilities on each of the holy days which I have just named?

A., Well, we feel this, certainly as a part of our belief that it's important for an individual to maintain good standing with the church as well as with God that he observe these days.

MR. BENNETT CLARK: That's all the questions I have.

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. When did you become aware of Mr. Cummins' problems with the Parker Seal Company?

[32]

MR. BENNETT CLARK: I object to that. I don't know that there's been any testimony to any problems yet.

MR. JAMES A. CRUMLIN: I'm sorry, I wasn't listening too closely, what was your question?

MR. THOMAS L. HOGAN: I asked him when he became aware that Mr. Cummins was having problems with the Parker Seal Company. I'm referring to the date he was discharged.

MR. JAMES A. CRUMLIN: I think you ought to specify the problem.

Q-2. When did you become aware that Mr. Cummins was discharged?

A., It was sometime in September of 71, if I remember right. I can't remember the exact date.

Q-3. When Mr. Cummins talked to you had he been discharged at that time?

A., The first time I was aware of it was at the time that he was told that he had —

MR. BENNETT CLARK: I'm going to object, for it to get to hearsay.

[33]

MR. JAMES A. CRUMLIN: Sir, I don't think you can tell what he told. I think in answer to his question, if you know and if you can remember or have anyway of refreshing your memory and if you can tell him or this Commission when it came to your attention that he had been discharged, you may do that.

A., It was sometime, September or October of 71.

MR. THOMAS L. HOGAN: I think it would be permissible for him to tell us what Mr. Cummins told him.

MR. JAMES A. CRUMLIN: I think he can go that far but when he was saying somebody told Mr. Cummins, I don't think he ought to go that far.

Q-4. Well, that's — what did Mr. Cummins tell you?

A., He told me that he had basically one (1) week in which to decide whether or not he would work on the Sabbath or would be relieved of his duties if he would not work on the Sabbath.

Q-5. And was it after that time that Mr. Cummins told you that he had been discharged?

[34]

A., Right.

Q-6. And for the reason of not working on the Sabbath?

A., Yes.

MR. BENNETT CLARK: I object to that.

MR. JAMES A. CRUMLIN: You are putting words into his mouth.

Q-7. For what reason did Mr. Cummins tell you he was discharged?

A., Because he wouldn't work on the Sabbath.

MR. THOMAS L. HOGAN: I think that's all.

INTERROGATION BY MR. BENNETT CLARK.

Q-1. Reverend Barfield, one (1) question. Did he tell you the reason that he was terminated was because he wouldn't work on the Sabbath or wouldn't work on Saturday?

A., Well, sometimes we refer to it as Saturday and sometimes we refer to it as the Sabbath.

Q-2. I don't want to be a nit picker but it's a fact that the Sabbath ends at sundown Saturday?

A., Right.

[35]

Q-3. So a portion of Saturday is not included in the Sabbath then?

A. That's true.

MR. BENNETT CLARK: No further questions.

MR. FRED ANHOUSE: Does Parker Seal work on Sundays?

MR. BENNETT CLARK: Mr. Anhouse, I'll answer that. Occasionally, I think.

MR. JAMES A. CRUMLIN: Well, I don't think he's qualified.

MR. BENNETT CLARK: We will have a witness.

MR. FRED ANHOUSE: Well, can I ask Reverend Barfield something else then?

INTERROGATION BY MR. FRED ANHOUSE.

Q-1. What is your policy on travel on Saturdays at the church, is there any observance of that, based on the Jewish faith on this point?

[36]

A., Well, based on the Jewish faith, the Old Testament, that a man is permitted to travel within his church area to attend Sabbath services.

Q-2. This is o.k. with your church belief then?

A., Certainly.

Q-3. What kind of attendance does your church have on Saturday, in numbers, how many people come?

A., Approximately three, fifty (350) or above.

Q-4. What about other activities, let's say, after your services, is it o.k. with the church if you go shopping or do something else?

A., No.

Q-5. What are you supposed to do after services?

A., Return home and to rest until the Sabbath is over.

MR. JAMES A. CRUMLIN: Any other questions? That's all, sir.

* * * * *

The witness, Mr. Paul Edwin Cummins, affirms his testimony to be the truth, the whole truth and nothing but the truth.

[37]

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. Would you please state your full name and address for the Commission?

A., Paul Edwin Cummins, Box 85, Mt. Vernon, Kentucky.

Q-2. And what is your religion, sir?

A., I belong to the World Wide Church of God.

Q-3. And are you now currently employed?

A., Yes sir.

Q-4. As what?

A., Carpenter.

Q-5. And how long have you been employed in that position?

A., Since around November the 29th, I believe.

Q-6. And were you employed at the Parker Seal Company?

A., Yes sir.

Q-7. When did you first go to work for Parker Seal?

A., December the 9th, 1958.

Q-8. And what position did you hold at that time?

A., Production Scheduler.

Q-9. And what did that involve?

A., Keeping records of production of the molding of the press line, also recording the

pre-forms made by the Stock Preparation Department.

Q-10. Now, which department did you work in at that time?

[38]

A., Well, we were working in the Molding Department. We were charged to that Department for accounting purposes.

Q-11. How long did you stay in that particular position?

A., Approximately two (2), maybe three (3) years.

Q-12. And then where did you go?

A., I went into scheduling in the Stock Preparation Department.

Q-13. Now, was that a promotion or just a transfer?

A., Well, it was, in one sense, a transfer into a different department, also an opportunity to learn a different job.

Q-14. Were you paid more money?

A., Eventually I was paid more money. I don't recall if there was an increase in salary at the time I moved.

Q-15. At this time were you paid as an hourly employee or were you a Company employee?

A., I was salaried.

Q-16. And you were not a member of any union?

A., No sir.

Q-17. Were you a Supervisor in any manner?

A., No sir, not at that time.

Q-18. What position did you hold next?

A., I went to a Supervisor in the Stock Preparation Department.

[39]

Q-19. How long did you hold that position?

A., Approximately six (6), seven (7) months, from there I went to the Supervisor of the Banbury Department in approximately May of 1965.

Q-20. And how long were you in that position, Supervisor of Banbury?

A., From May, 1965, or thereabouts, until September the 3rd, 1971.

Q-21. What happened on September the 3rd, 1971?

A., I was terminated from Parker Seal for failure to work on Saturday, which is my Sabbath.

Q-22. Would you explain to the Commission exactly what, I think you said you were the Supervisor of the Banbury Department, exactly what the Banbury Department does in its relationship to the Parker Seal Company?

(The answer is stricken from the record)

MR. BENNETT CLARK: Pardon me, at this point, Your Honor, I've just been informed by one of the Company officials that inadvertently, perhaps, Mr. Cummins' statement as to the various ingredients used in this product may involve trade secrets on this type of product, and we would request that [40] it be stricken from the record. I don't think it has anything to do with this case.

MR. THOMAS L. HOGAN: I have no objection.

MR. JAMES A. CRUMLIN: Let it be stricken.

Q-23. Now, in the operation of the Banbury Department, how many men were working under you?

A., Well, usually anywhere from eight (8), nine (9), ten (10) men on the first shift.

Q-24. And you said you were the Supervisor of the first shift?

A., Yes sir.

Q-25. Were there any other shifts in Banbury?

A., Yes sir, there was a second shift and on occasion we had also a third shift.

Q-26. And who were the Supervisors of those shifts?

A., As such, there was no Supervisor in the Department on the second or third shift. This was covered by a Supervisor in adjoining department.

Q-27. And what department was that?

A., Stock Preparation Department.

Q-28. What exactly did your job entail as far as what you actually did? How did you spend the day?

[41]

A., By securing orders from the various clients that needed the synthetic rubber compound. After obtaining those orders I proceeded to schedule a production out for our facilities to make this needed material to move out to the other plants and departments. Also reviewing, checking inventories to maintain a working level but not having too much money tied up in inventory, and preparing the schedules for the second shift.

Q-29. So you would prepare the schedules then for —

A., The second and third shift, when needed.

Q-30. All the Banbury shifts?

A., Yes sir.

Q-31. How many there were on that particular day?

A., If there happened to be two (2), there was two (2) schedules, and three (3), there was three (3) schedules.

Q-32. Well, did you actually as far as — how much of your time, let's say, in a normal work day was spent in inventorying and scheduling?

WITNESS:

Do you mean hours or —

[42]

MR. THOMAS L. HOGAN: The hours of the day, an eight (8) hour day.

A., Well, that took a considerable amount of time to group the orders together and get that schedule out. This is done during the morning portion of the day to review everything and see that we had what we needed. And actually it would depend on how many orders we had to the extent of what amount of time was spent. We had high periods and low periods.

Q-33. What would be the average percent of time you spent on these two functions?

MR. CRUMLIN: There's no question as to the hours spent on these, is there?

MR. HOGAN: No, there isn't. The point of this particular line of questioning is, and I think will come out later, is whether or [43] not the Banbury operation functioned as well whether or not Mr. Cummins was there.

MR. CRUMLIN: I don't know about the rest of the Commission but it is my impression that it was not necessary to have a supervisor on each shift.

MR. HOGAN: That's my point. There was only one supervisor hired on the first shift. There was no supervisor on the second or third shift.

MR. CRUMLIN: We are going to run into another session it looks like if we don't get on. Let's try to move on with it.

[44]

MR. HOGAN: Bear with me. It is a very important part of our case as to exactly what he does when he is on the job and whether or not it was necessary for him to be physically present.

MR. CRUMLIN: Are you saying that it is not necessary for him to be present, physically present?

MR. HOGAN: What Mr. Cummins has said is that his job involved inventorying and scheduling.

There may be some confusion as far as there having to be a supervisor. He stated earlier that on the second or third shifts there was no other supervisor for Banbury; that whoever was supervisor in Stock Preparation had the supervisory capacity over the Banbury Department.

MR. CRUMLIN: Alright, let's see.

Q-34. You said you had eight or ten men under you on the first shift?

A., Yes, sir.

[45]

Q-35. How much time did you spend actually supervising these eight (8) or ten (10) men?

A., Actually watching in the operation, for a very small amount of time observing, because of graphs and charts which we had which I reviewed daily, I was able to determine whether or not these men were working. I was available in my office in the center of the operation but I wasn't always looking at the men directly more than two (2) hours a day at the most.

Q-36. These men that were working were following the schedules you set up?

A., Yes.

Q-37. Now on the second shift was it necessary to have a supervisor in the Banbury operation?

A., No sir, because —

MR. BENNETT CLARK: I object to his opinion as to whether or not it was necessary.

Q-38. Was there ever a second shift Supervisor in the Banbury Department during the time that you were with Parker Seal?

A., Yes sir, at one brief period of time there was. The production was fairly low, the men weren't doing a [46] very good job and there was a second shift Supervisor for a short period of time and after, well, some comments he made to the men he's been moved back.

Q-39. So the usual procedure there is not to have a supervisor?

A., That was standard procedure over the years that I was with Parker Seal Company.

Q-40. When did you join the World Wide Church of God?

A., As far as fully becoming a member, it was September of 1970.

Q-41. Had you been active at the church before that time?

A., Yes, as far as attending the activities, observing the holy days, the annual Sabbaths, feasts and those things, I did attend those.

Q-42. Did you attend services on each Saturday?

A., Yes sir, since about April or May, 1969.

Q-43. And what did you do about your job?

A., Well, I was granted permission to leave the plant. I would go in and work a partial day on Saturday, I was granted permission then to leave and take my family to the Sabbath services.

Q-44. And who granted you this permission?

A., My superiors, the General Foreman, Mr. Charles Clark, the Plant Manager, Mr. Conley Saylor.

[47]

Q-45. And you told them why you were leaving work?

A., Yes sir.

Q-46. Now, at this time you were working in the Banbury Department?

A., Yes sir.

Q-47. So I would assume then that you were working on Saturday if the Banbury Department was operating?

A., Not necessarily. I was also, at that particular period of time, working in Stock Preparation and the Banbury at the same time, in 69. And there was occasions when the Banbury wouldn't work when the other departments would.

Q-48. When you started the practice of leaving

work, of coming in and then leaving, was someone else called in to replace you?

A., No sir.

Q-49. Who did the supervising of the Banbury Department, of do you know?

A., The Foreman in the Stock Preparation Department would take care of the Banbury.

Q-50. Was there any problems with the other employees with you not working a full day?

MR. BENNETT CLARK: Object unless he says, if you know. He may not have known, they may have been complaining [48] to somebody else.

A., As far as I know there wasn't. We had a good working relation between the men in the Stock Preparation and Banbury, if one of them needed to be off I was available to fill in at any other time other than my Sabbath or an annual holy day, and they knew this.

Q-51. Did you tell them that you were available?

A., Yes sir.

Q-52. Did anyone ask you to fill in for them?

A., Yes sir, on occasion I was asked to fill in, which I did. On occasion I was scheduled to work twelve (12) hour shifts, which I did. Anytime the plant ran on Sunday I was there.

Q-53. When you went to, I think you said, Mr. Clark and Mr. Saylor to tell them you were only going to work partially on Saturdays did you say anything to them about making up these hours that you'd be losing?

A., Well, with the number of hours I was working there was no question about it at that time. They said as long as you get the job done, why, they didn't really care.

MR. BENNETT CLARK: I object to, they.

[49]

Q-54. Who were you referring to?

A., Mr. Conley Saylor and Mr. Charles Clark.

Q-55. When did you start attending — when did you become a full member of the Church of God?

A., I began observing the Sabbath on July of 1970.

Q-56. Did you have any conversation with Mr. Saylor or Mr. Clark at this time?

A., Yes sir, I had a meeting with Mr. Saylor about it. I told him that I wouldn't be available for Saturday work after that given period of time.

Q-57. And what did Mr. Saylor say?

A., He said he would think about it and let me know in a few days whether I still had a job or not.

Q-58. What did you tell him? Did you say — did you ask him to give you off or did you tell him that you could not work?

A., I told him, due to the religious belief that I had that I'd proven that Saturday was the Sabbath Day, and that it would be wrong for me to work on the Sabbath, and that I wouldn't be available for work. I would work any other time except on the Sabbath or an annual holy day, he could name the hours or the time, what he wanted me to do and I would be glad to take care of that.

Q-59. What did you tell him you would do if he wouldn't [50] let you off on Saturday.

A., I didn't tell him I would do anything. I mean, I just wouldn't be available for work and if he wanted to fire me at that time it was — well, he could have fired me.

Q-60. And what — he said he would let you know within a few days?

A., Yes sir.

Q-61. And what did he let you know later?

MR. BENNETT CLARK: I object, that's hearsay.

MR. THOMAS L. HOGAN: I think he can testify as to what Mr. Saylor told him.

MR. BENNETT CLARK: Well, that was somebody else talking, it's hearsay.

MR. THOMAS L. HOGAN: Well, I think the conversation he's just been relating has been the conversation he had with Mr. Saylor. I mean, there's no problem Mr. Saylor —

MR. JAMES A. CRUMLIN: Is Mr. Saylor here?

[51]

MR. THOMAS L. HOGAN: Mr. Saylor is going to be a witness.

MR. JAMES A. CRUMLIN: Why not limit it, why not just ask him if he was advised by his employer that he would be affected and if so, which way.

Q-62. The time we're talking about was in July of 1970?

A., Yes sir.

Q-63. Were you fired at that time?

A., No sir, Mr. Saylor told me that I still had a job and that I could observe the Sabbath.

MR. BENNETT CLARK: Your Honor, that's just what I objected to.

Q-64. Did you continue to take off on Saturdays?

A., Yes sir, from that day forward I didn't work any Saturdays.

Q-65. Did you work the holy days?

A., No sir.

Q-66. Where there any other times when you were called upon to fill in for other employees after July of 70?

A., Yes sir.

Q-67. Were you ever assigned to work longer than an [52] eight (8) hour shift?

A., Yes sir, I was scheduled as a vacation fill in during the vacation period for the Spring and Summer of 1971.

Q-68. And what was your schedule?

A., Well, as a substitute Supervisor for the Stock Preparation Department. There was a slightly a manpower shortage of supervision. Many of the supervisors were scheduled for twelve (12) hour shifts. And I was scheduled in to fill in for some of these and also I volunteered to fill in for anyone that needed relief.

Q-69. You say you volunteered, how did you volunteer?

A., By telling my General Foreman Mr. Ken Hunt and the three (3) supervisors in the Stock Preparation Department that I would be glad to work for them anytime that they needed relief.

Q-70. Who were those three (3) supervisors?

A., Mr. Oscar Fain, Mr. Charlie Owens and Mr. Chester Webb.

Q-71. When you worked these — longer than your eight (8) hour shift, was that an assignment? Was that the posted assignment at the beginning of the week?

A., Normally they would put out a vacation schedule, I think, more than a week in advance to give you [53] the opportunity to prepare for the longer shift. Unless there was an emergency that came up, you knew about it in advance.

Q-72. When you say you told Fain and Webb and Owens you were available to fill in, were you told to do this, were you told to make yourself available?

A., Yes sir, Mr. Haddock told me that I should fill in and also I felt like I should fill in because of not working on the Sabbath.

Q-73. Were these other men working on Saturday?

A., They were working, yes.

Q-74. You originally said Mr. Saylor was the Manager, now you have mentioned Mr. Haddock. When did Mr. Haddock become the Plant Manager, or do you know?

A., Sometime near September or October of 1970.

Q-75. Did you tell Mr. Haddock you would not be working on your Sabbath?

A., The second Sabbath I missed, yes sir, I did. The first Sabbath I told him I wouldn't be available for that Sabbath. On a Monday morning following the Saturday passed he came to me and he said, I understand you're a Seventh-Day Adventist. And I said, no sir, I'm not, I belong to the World Wide [54] Church of God and I observe Saturday as the Sabbath. And he says, o.k., that'll be fine as long as it don't cause any problems I have no objections to you observing the Sabbath.

Q-76. And, if you know, when Banbury was scheduled to work on your Sabbaths who was taking your place?

A., Normally it was Mr. Chester Webb, which he volunteered to work in my place.

Q-77. Now, when Banbury works does Stock Preparation, does that work at the same time?

A., Normally it does, yes sir. There may be on occasion — well, seldom would you have Banbury going without Stock Preparation.

Q-78. Would Mr. Webb just be supervising the Banbury operation on Saturdays?

A., Seldom ever, he did on occasion, maybe once or twice a year.

Q-79. Would they have two (2) supervisors on Saturday, if you know?

A., The second shift Stock Prep. Supervisor would also be in to supervise the second shift.

Q-80. Well, would they have two (2) supervisors on the same shift?

A., No sir.

[55]

MR. BENNETT CLARK: I object to this. This man has testified that he did not work on Saturdays. He has no basis for this knowledge that he supposedly has. He's testifying about all these things going on on Saturday and he wasn't there.

MR. JAMES A. CRUMLIN: I think the objection is well taken unless you can ask him if he knows.

MR. THOMAS L. HOGAN: Well, I think, with the exception of the last question, I did.

Q-81. Do you know who was working on Saturdays?

A., Yes sir. After working with people for thirteen (13) years you get fairly close to them and you know — they tell you what they do and you tell them what you do.

MR. BENNETT CLARK: Your Honor, note my objection again. For the reason that working with people thirteen (13) years and you know all that they do and they know all that you do, if they told him it's [56] obviously hearsay. Otherwise it's — I don't know what it is.

MR. JAMES A. CRUMLIN: The record will also show this, the objection is overruled.

Q-82. I assume that since you were discharged from the Parker Seal Company that you must have had some problems with them, when did these problems first arise?

WITNESS: Would you repeat, please?

MR. THOMAS L. HOGAN: When did your problems first arise with Parker Seal which led to your termination?

A., Sometime during the last week of August, Mr. Dutch Haddock who was the Plant Manager of the Berea plant came to me, he stated very briefly, he says, I have a problem for you. I thought perhaps it was something to do with an emergency production order or something out of the ordinary. I said, well, let's shoot, let's have it, I'd like to get on it right away. He says, I've had a complaint from the Supervisor about you [57] not working on Saturdays. I said, is that right. And he said, yes sir. He says, you're going to have to start working on Saturday, I'm going to give you a week to make up your mind whether you're going to work or not. I said, that'll be fine. And approximately one (1) week later, about September 1, 1971, Mr. Dutch Haddock came into the office in Banbury and sat down and says, have you reached a decision. I said, yes sir, I notified the Company sometime ago that I wouldn't be available

on Saturday for work because of my Sabbath. And so he said, why do you have to go on Saturday. And I said, well, that's the Sabbath, and briefly explained to him that that was the Sabbath that we observed. He said, well, I'm sorry to hear that, he says, I may have to do something I don't want to do. I said, well, do whatever you have to if that's what you have to do. That was on a Wednesday. On a Friday morning, at approximately 8:30, September the 3rd, 1971, Dutch Haddock came to the office in Banbury and he sat down and he stated, we've had a parting of the minds. I said, is that right. He said, yes sir. He said, I hate to do this but I need a man to work six (6) days a week. And he proceeded to tell me he thought I had [58] handled the job well but that he needed someone to be there six (6) days a week. And that he had discussed with his superiors the possibility of a transfer into a different job. This was no because there were supposed to be no downgrades, and if you couldn't do the job you couldn't be downgraded. And he says, I hate to have to do it but I'm going to have to terminate you. And he said, I think you do a fine job for us but as he stated he needed a person for six (6) days a week. He says, I have your severance pay, your vacation pay, I have a Change of Status here, it's not on record yet, nobody will know that you've been fired until after you're gone. He says, we'll put out a memo after you leave stating that you're no longer with the Company but I'd like for you to work

the remainder of the day. I said, if it'll make you happy I'll stay all day. And that was around 8:30 in the morning. About 11:00, 12:00 o'clock my replacement came in. He says Dutch sent me over to see you. He says, what's up. And I said, didn't he tell you. And he said, no, he just told me —

MR. BENNETT CLARK: Your Honor — pardon me, Mr. Cummins but —

[59]

MR. JAMES A. CRUMLIN: I think he is going a bit far.

Q-83. You mentioned earlier that Mr. Haddock gave you a Change of Status Notice, I want to show you a copy and ask you if that is a copy of the Change of Status Notice that he gave you?

A., Yes sir.

MR. THOMAS L. HOGAN: If there's no objections this is Complainant's Exhibit II.

MR. JAMES A. CRUMLIN: Any objections?

MR. BENNETT CLARK: No sir.

MR. JAMES A. CRUMLIN: Let it be entered as Complainant's Exhibit II.

Q-84. Did at anytime when Mr. Haddock was talking to you did he make any reference to your not

being available for work at any other time besides your Sabbath?

A., No sir.

Q-85. Did he make any criticism of the efficiency of your Department?

[60]

A., No sir, I don't think he could question the efficiency in the Department.

Q-86. Did he say anything about the efficiency of your Department on Saturday when you weren't there?

A., No sir.

Q-87. Did he say anything about you working longer than eight (8) shifts?

A., At one point he mentioned that I should fill in for some of the other supervisors, which I volunteered to do and also when I was scheduled I did fill in for them. No, he didn't schedule me as far as any extra hours in the Banbury.

Q-88. Were you ever assigned any extra hours that you did not work, with the exception of your Sabbath or a holy day?

A., No sir.

Q-89. Was there any mention made of your not being present in the Banbury Department when it was working, with the exception of the Sabbath?

A., No sir.

MR. THOMAS L. HOGAN: I have no further questions.

[61]

INTERROGATION BY MR. BENNETT CLARK.

Q-1. Mr. Cummins, where do you live now?

A., Mt. Vernon, Kentucky.

Q-2. How long have you lived in Mt. Vernon, Kentucky?

A., Approximately thirty-eight (38) years.

Q-3. Where do you attend church, sir?

A., Lexington, Kentucky.

Q-4. Do you attend any meetings other than the church services offered in that church?

A., We have a semi-monthly bible study.

Q-5. What day of the week does that usually take place on?

A., It takes place at night.

Q-6. And you drive to Lexington for that?

A., Yes sir.

Q-7. Let me get this straight in my mind. How long had you worked for the Parker Seal Company prior to the time of your termination?

A., Approximately twelve (12) years and eight (8) months.

Q-8. When you first began to work for Parker Seal Company did you normally work on Saturdays?

A., Yes sir, I did.

Q-9. And at no time, up until the time you joined the World Wide Church of God, did you ever complain to the Company about working on Saturdays?

[62]

A., No sir, I did not.

Q-10. Did the Company frequently or often in the course of the period before you joined the World Wide Church of God schedule Saturday work?

A., It would all depend on the business, I guess, how the inventories was, sometimes they did, sometimes they didn't.

Q-11. But you were used to doing Saturday work?

A., Well, before I found out about the Sabbath I would work seven (7) days a week, Saturday wasn't

Q-12. Yes, I understand, I'm talking of before you found out about the Sabbath did you normally work on Saturdays?

A., If it was scheduled I did, yes sir.

Q-13. It was only after you joined the World Wide Church of God that you began to restrict the days and the hours of the days that you would work?

A., Well, I was restricted to not working on the Sabbath or the annual holy days, and I tried to schedule my vacation to cover a portion of those holy days.

Q-14. But it wasn't until you joined this church that you refused to work on the scheduled work days?

[63]

A., Yes sir, that's true.

Q-15. And so, what, for the ten (10), ten and a half (10-1/2) years you customarily and always worked on scheduled work days whether they fell on Saturdays or Wednesdays or whatever the day might be?

A., Yes sir.

Q-16. I believe you were, what is known as, an exempt employee?

A., Yes sir.

Q-17. Would you just explain for the ladies and gentlemen of the Commission what an exempt employee at the Parker Seal plant in Berea was? What did that mean?

A., Well, you're a salaried personnel person and was not restricted to punching the time clock.

Q-18. Did you generally work on call, that is, you weren't restricted to eight (8) hours a day or ten (10) hours a day?

A., No sir, I was available whenever I was needed, other than the Sabbath or annual holy days, I would receive calls at night many times to go in and get up out of the bed and go in to take care of a problem if it was something that was needed.

Q-19. And you paid a salary, weren't you?

[64]

A., Yes sir.

Q-20. And it's a fact that you were paid considerably more than an hourly paid employee, isn't it?

MR. THOMAS L. HOGAN: Objection, he wasn't an hourly employee at the time.

Q-21. Do you know what hourly paid employees are paid?

A., Yes sir, I did.

MR. JAMES A. CRUMLIN: Let him answer then, he's been up through the ranks and I think he should know.

Q-22. Was your salary significantly greater than the average salary of the hourly paid employees at the Parker Seal Company?

A., It would depend on what job they held. Are you talking about a sweeper or a technician, I mean, you know —

Q-23. I'm talking about the average employee at the Parker Seal Company, let's take a Stock Prep. top rated employee?

MR. THOMAS L. HOGAN: I object to significantly greater. I think — I'm sure that you have — he gave you what — [65] I mean, it would be ridiculous what you could make by this, to use the term of nit picking, is greater —

MR. BENNETT CLARK: Alright, Your Honor, I'll drop it.

MR. JAMES A. CRUMLIN: They weren't opposed, saying that you were nit picking and you could have been.

MR. BENNETT CLARK: Alright, I'll drop it. Thank you, Your Honor.

Q-24. You were not covered by the union contract were you?

A., No sir.

Q-25. You were considered, so far as the union contract was concerned, as part of management?

A., Yes sir.

Q-26. Were you also a member of the center program known as the Cost Goal?

A., Yes sir.

Q-27. What did the Cost Goal program require of you?

A., Well, it required that we exert every effort to show a greater return on the investment. The parent corporation granted us a certain amount [66] to work with and we were to go all out above, you know, to try to make the most profit with the least cost for the Company. And we shared in the profits that they made.

Q-28. So this was to your benefit?

A., Yes sir.

Q-29. You'd use your initiative and incentive and ingenuity?

A., Yes sir.

Q-30. I believe that you stated that at one time there was another Foreman who was Foreman of the second shift Banbury?

A., Yes sir.

Q-31. Was that Mr. Dan Dunn?

A., Mr. Dan Dunn was a Management Trainee, so I was told. He came through the Berea plant and working in various departments. No, he wasn't the man I was referring to.

Q-32. Do you know Mr. Dan Dunn?

A., Yes sir.

Q-33. Do you remember when Mr. Dan Dunn acted as Foreman of the second shift Banbury?

A., Yes sir.

Q-34. Do you know, of your own knowledge, what the efficiency rate of the second shift Banbury was at the time [67] that Mr. Dunn came?

A., Yes sir, well, I don't know the figures, I know it was low because we'd had a period for years of second shift Banbury being lower than the first shift. But I don't know the figures exactly for that period of time.

Q-35. And as a result of Mr. Dunn's work, if you know, did the efficiency of the second shift Banbury increase?

A., Yes sir, I say that there was an increase in the second shift Banbury production because two (2) employees who were very bitter against the Company and were afraid they were going to be fired by Dan Dunn, they were scared to death of him.

Q-36. Were they fired?

A., No sir, they told me this later after he left. They thought he was sent there to fire them.

Q-37. They weren't fired, were they?

A., No sir, they thought they were going to be.

Q-38. After Mr. Dunn left were there any other Foremen designated as Foreman of the Banbury

Department, as such? That is, prior to the time of your leaving the Company?

A., Not that I recall, sir.

Q-39. Was the work in the Banbury Department dangerous at [68] all, was there any danger involved in the work?

A., I think in a factory such as an o-ring factory there's always a possibility of a dangerous accident.

Q-40. Where is the Banbury Department physically located in the plant in reference to the Stock Prep. Department?

A., The building is facing East —

Q-41. Well, rather than getting into geographical location, is it upstairs or downstairs or —

A., O.k., they're located side by side, there's a sliding door between the two (2) departments. The Banbury Department is a three (3) story building, just adjacent to it is the Stock Preparation Department with a large sliding door about ten (10) by twelve (12) feet high.

Q-42. Where is the Foreman's office of the Banbury located with reference to the Stock Prep? Isn't it upstairs?

A., Yes sir, it is.

Q-43. So you've got to go through this wall — pull this sliding door, go through the wall, shut the

door, go up the stairs to get to the Foreman's department when you're going from Stock Prep. to Banbury?

A., It depends on what level you're going to, you may —

[69]

Q-44. Well, I'm saying when you go to the Foreman's office in Banbury?

A., Yes sir.

Q-45. Do identical employees work in the Stock Prep. Department who work in the Banbury Department?

WITNESS: What do you mean, identical?

MR. BENNETT CLARK: Well, does the same fellow work in the Stock Prep. Department part of the time during the shift and then part time in Banbury, or do you have different employees in the two (2) departments?

A., It could work that way, but normally they are scheduled to work in either one department or the other, but we had versatile employees who were capable of doing either job.

Q-46. On their shift don't they work just in one (1) department?

A., Unless there's an emergency or some deviation from —

Q-47. I'm talking about normal workers?

A., Yes, normal workers do.

[70]

Q-48. How many years did you work as the Foreman of the Banbury Department prior to joining the World Wide Church of God?

A., Somewhere in the neighborhood of three (3) years.

Q-49. During that three (3) years that you worked in the Banbury as the Foreman again did you work whenever Saturdays were scheduled?

A., Yes sir.

Q-50. As a result of your position as the Foreman of the Banbury Department did you ever learn why work was scheduled on Saturdays?

WITNESS: Did I ever learn why it was scheduled?

MR. BENNETT CLARK: Yes sir, what would cause the Company to schedule Saturday work?

A., Well, I felt like that it was — in my own opinion it was not —

Q-51. Well, I'm asking if you know what the Company reason for scheduling work on Saturday was, not your opinion but the Company reason?

A., No sir, I don't know what their reason was.

[71]

Q-52. Are you familiar with the Union contracts at the plant for 1968 and 1970?

A., Yes sir.

MR. BENNETT CLARK: Your Honor, at this time I'd like to show Mr. Cummins the two (2) contracts. Now, these are the only copies I have on me and, as you see, one of these is an antique. I will get copies if you want me to and send them to you. For the record I would like to indicate that I have asked the Court Reporter to mark as Company Exhibit I, what purports to be an agreement between the Parker Seal Company and the International Brotherhood of Firemen and Oilers, Local Number Seventy (70), dated October 8, 1968. It is bound in a tan cover. I'd also like to note that I have asked the Court Reporter to mark as company Exhibit Number II a booklet similarly titled except that it bears the date of July 15, 1970.

Q-53. Mr. Cummins, let me show you what has been marked as Company Exhibit I. Have you seen such an agreement before?

A., Yes sir, I've seen it.

[72]

Q-54. Are you familiar with that as the

contract between the hourly paid employees Union and the Parker Seal Company at Berea?

A., I was at one time, yes sir.

Q-55. Alright, sir. And I show you Company Exhibit Number II and can you identify that as the contract between the Company and the Union representing the hourly paid production and maintenance employees of Parker Seal?

A., Yes sir.

Q-56. That was made after 1970?

A., Yes sir, I'm sure that that's right. I don't recall the colors but I'm sure that's right.

MR. BENNETT CLARK: Your Honor, I would like to ask that these be introduced into evidence as Company Exhibits I and II.

MR. JAMES A. CRUMLIN: No objection on the particular issue. Let me see those just a second.

MR. BENNETT CLARK: Your Honor, I will do my best to find a 1968 one, we've got plenty of 1970's.

[73]

Q-57. Mr. Cummins, prior to joining the World Wide Church of God, I believe you testified, you knew that your work at the Parker Seal Company would require that you often or many times work on

Saturday, didn't it, in your position as Foreman of Banbury?

A., We were informed as a group by the, I suppose, Vice President of the Parker Seal Company that we were going to be a forty (40) hour a week Company at the Boone Tavern Hotel in a meeting by the Company officials.

Q-58. I'm asking you about past practice, Mr. Cummins, not what somebody told you at a meeting. I'm asking you if your past experience at the Parker Seal Company, over the ten and a half (10-1/2) years that you had worked prior to joining the World Wide Church of God, were you aware of the fact —

A., I knew that there would be Saturdays when there was work scheduled because of emergency orders, breakdowns and what have you of that nature, yes, I knew there would be Saturday work scheduled.

Q-59. And after the meeting that you have mentioned there was Saturday work scheduled, wasn't there?

A., Yes sir.

[74]

Q-60. And isn't it a fact that there was regularly scheduled work at the Parker Seal Company, when you were required to be there, which happened to fall on your holy days,

Wednesdays or Fridays or Mondays or — that work was regularly scheduled then?

A., Yes sir.

Q-61. You were aware of that fact before you joined the World Wide Church of God?

A., Yes sir.

Q-62. Now, perhaps this goes without saying, Mr. Cummins, but it is a fact that it was a change in your religious state as opposed to the Company policy which caused you to stop working on the period from sundown Friday to Saturday and the days during the year which your church regards as holy days?

A., Yes sir.

Q-63. It's here that you testified, under examination by Mr. Hogan, that a Supervisor in the Stock Prep. Department, a Mr. Chester Webb, to quote you, you said, "which he volunteered to work in my place", were you referring about Saturday work in the Banbury?

A., Yes sir.

[75]

Q-64. You're stating that he volunteered to cover for you in the Banbury after you joined the World Wide Church of God.

A., Yes sir, on numerous occasions.

Q-65. In your opinion could the Banbury Department be operated as efficiently and safely and as well with the Stock Prep. Foreman supervising on Saturday as it could if you had been there?

A., With the proper scheduling the efficiency could be as great. As far as the safety factor, the Supervisor being present would not eliminate any hazards that might exist from the machinery, as far as a mechanical breakdown or something. I've been standing beside men when machinery broke down, they couldn't stop the machine and prevent the breakdown, I couldn't have either.

Q-66. Now, would you schedule as work orders came in day by day?

A., Normally I scheduled — the orders that came in were scheduled that day or the following day, depending on how large the orders were.

Q-67. But you'd never be able to schedule — you could only just schedule about one (1) day ahead?

A., Well, normally you wouldn't schedule more than one (1) day or a day and a half at the most.

[76]

Q-68. I noticed that Reverend Barfield said that the period of October of 1971, that the 10th and 11th of October were considered holy days. That

is a Sunday and a Monday, the 9th was a Saturday so you would have been off three (3) days during that period. If there was no other Foreman in Banbury how was that handled?

A., Well, that was during my vacation period or it was scheduled to be my vacation period and there should have been a man training to take my place.

Q-69. Did you take your schedule in bits and pieces as you went along?

A., No sir, normally I took my vacation in September and October because of the eight (8) day period of the Feast of Tabernacles and the Last Great Day.

Q-70. What would you do in April when you had two (2) holidays back to back?

A., I don't recall ever having two (2) that ran back to back.

Q-71. The 9th and 10th of April, the 16th and 17th of April?

A., That would have been on a weekly Sabbath, one (1) of those days. And with — I could schedule as much as three (3) days ahead if I had the proper planning which —

[77]

Q-72. Now, if an emergency order came up, of

course, you wouldn't be there, so it would just have to wait, wouldn't it?

A., No sir, we didn't receive orders on a Saturday, we received the orders through the —

Q-73. I'm talking about on a Friday or on a Monday?

A., Well, the man in charge could take the order, he had the authorization to make any change in schedules as he needed to do so.

Q-74. After you joined the Church of God and you stopped working on Saturdays and on the days that your church regarded as holy days, was your pay or any of the benefits that you received from the Company reduced?

A., No sir.

Q-75. Did you ever offer to have the Company reduce your wages in sort of a pro-rated part for the Saturdays that you were missing?

A., No sir, I didn't suggest it to the Company, I suggested they let me fill in in other positions to make up the time off.

Q-76. Did you ever regard it as sinful to collect wages from an employer who required another employee to work on Saturday?

[78]

MR. THOMAS L. HOGAN: Objection, I don't think that's a relevant question because it assumes that there's some other individuals —

MR. BENNETT CLARK: Your Honor, that question was asked and presented in the case of Dewey vs. Reynolds Metal Company in front of the Supreme Court.

MR. THOMAS L. HOGAN: I don't see where this should be taken into consideration.

MR. JAMES A. CRUMLIN: Will you repeat the question again for the members of the Commission?

MR. BENNETT CLARK: Certainly.

Q-77. Did you regard it as sinful to collect wages from an employer, if you were on salary, that is, if you received your wages whether you worked or not, to collect wages from an employer who required that other employees work on Saturdays to help them earn profit?

[79]

A., No sir, I'm not qualified to —

MR. THOMAS L. HOGAN: Excuse me, Your Honor, I would object on the grounds that since it's

already established that this man was a salaried employee, that he got paid whether he didn't work because he was sick or whether or not he was on a vacation, whether he was attending a funeral or whether he was off because it was the Sabbath. To say whether it was sinful —

MR. JAMES A. CRUMLIN: I think the last part is the part that hasn't been established and is what he wants him to answer now.

MR. THOMAS L. HOGAN: Well, the question is, he just said the Company didn't say they were not going to pay him, he was paid a salary, that was something that the Company decided. For him to decide whether or not it was sinful for the Company to do so, if by paying him —

MR. JAMES A. CRUMLIN: Well, it is whether he, himself, thought it [80] was sinful to receive this money.

MR. BENNETT CLARK: Your Honor, he's answered it so I won't pursue it anymore.

MR. JAMES A. CRUMLIN: I think that since he's answered it we ought to move on to something else.

Q-78. Mr. Cummins, I believe that you stated that there were some occasions or they may have been a few during the year when the Banbury worked on Saturdays and when the Stock Prep. Department did not work on Saturdays, is this true?

A., Yes sir, this is true, there was —

Q-79. And did Chester Webb fill in, to the best of your knowledge, on those Saturdays?

A., Yes sir, as far as I know unless he could have — maybe he could have been on vacation and his replacement might have worked.

Q-80. Do you know if Mr. Webb attended church?

A., Sir, I can't answer that.

Q-81. Whatever his faith, if he had any faith or no faith at all, he was required to work on Saturdays so that you could attend your church's services?

[81]

MR. THOMAS L. HOGAN: Objection. Mr. Webb would be required to work when Mr. Webb was assigned to work.

MR. BENNETT CLARK: He stated that Mr. Webb —

MR. THOMAS L. HOGAN: He doesn't know why Mr. Webb was assigned to work by the Company. Mr. Webb will be a witness, you can ask Mr. Webb why he was assigned.

MR. BENNETT CLARK: If Mr. Webb was assigned to work, Mr. Cummins has not testified to

the fact because he testified that Mr. Webb volunteered. Now, either Mr. Webb volunteered or he didn't, so we've got a real problem here.

MR. JAMES A. CRUMLIN: Let him answer.

Q-82. The fact is that Mr. Webb was assigned to work on Saturdays, wasn't he, to cover for you?

A., He would come to me and tell me that, I'll work for you anytime that you need to be off. He said, I don't care to fill in for you on Saturdays because I'm not doing anything. So I took that as a [82] volunteer.

Q-83. I believe that you testified that there were, what, nine (9) or ten (10) people on the first shift of the Banbury Department?

A., Yes sir.

Q-84. How many were on the second? Four (4) or five (5)?

A., There was usually five (5) sometimes more, sometimes it might even be down to two (2) people on the second shift due to an emergency reason or something of that nature, but normally there was five (5), six (6) people.

Q-85. Now, we have introduced into the record here the two (2) contracts, the 68 and 70 contracts, of the Parker Seal Company. I would like to read from Page Three (3) of these contracts. "Employees are —

MR. JAMES A. CRUMLIN: Which contract are you reading from?

MR. BENNETT CLARK: I'm reading from the 1968. Your Honor, they're identical, rather than bore the Commission by reading both of them I'll read one. Simply what happened is, if I may just state this for the [83] record so there won't be any confusion, the Company just adopted certain stock provisions that appear in all the Union contracts. And the overtime provision is of that type. O.k., reading from Article IV, Hours and Overtime, Section 2, Sub-paragraph D. "Employees are expected to work overtime when requested by the Company unless excused by the Company in advance for valid reasons. Whenever possible, employees will be notified about daily overtime on the preceding day, and will be notified about Saturday work on the preceding Thursday".—

MR. JAMES A. CRUMLIN: Mr. Clark, do you have a question from this?

MR. BENNETT CLARK: Yes sir.

MR. JAMES A. CRUMLIN: What's the purpose of reading of this contract since he was not covered by the contract?

MR. BENNETT CLARK: I want to show, Your Honor, that the Company did not make a practice of scheduling Saturday work if they were not required

to because they [84] were required to pay time and a half wages for all work on Saturday.

MR. THOMAS L. HOGAN: He stated that before, that they paid time and a half on Saturday.

MR. BENNETT CLARK: Well, just to get it into the record, Your Honor. If that's sufficient that's all.

MR. JAMES A. CRUMLIN: Do you have further questions?

MR. BENNETT CLARK: Yes sir, I do, if I may have just a minute, please.

INTERROGATION BY MR. JAMES A. CRUMLIN.

Q-1. Sir, this Church of God, the World Wide Church of God, is that a national church or is it just one (1) building or do you have several locations?

A., Well, it states world wide and that's what it is, in effect. We have ministers in all corners of the world, so to speak.

Q-2. And the Lexington church is the closest one to your residence?

[85]

A., At the present time, yes sir.

Q-3. How many do you have in Kentucky?

WITNESS: How many churches?

MR. JAMES A. CRUMLIN: Yes.

A., We have a church in Bowling Green, Kentucky; Louisville, Kentucky; Covington, Kentucky and Lexington, Kentucky.

Q-4. Now, one (1) other question while Mr. Clark is getting ready, did you ever go to the Company and ask them if they would permit you to put up a schedule or suggest a schedule to them whereby you might take in your church Sabbaths and other church holidays? Did you ever propose this to them or you just told them what you'd like them to do?

A., Well, sir, I suggested to my superiors a method of meeting the required production by being more efficient in the Department and then it would not have been necessary to work on Saturday. We could have actually —

Q-5. You mean for you to work?

[86]

A., Well, for the whole Department.

Q-6. How far would that reviewed, or how far did your position carry you to the top level of policy making and decision making in the Company?

A., I was allowed to make suggestions, as far as decisions, they were at a lower level, as a shift Foreman or Supervisor matter.

Q-7. Well now, let me try to get this thing straight. The Company itself decided and determined whether or not Saturday work was necessary?

A., Yes sir.

Q-8. And you did not ask them if they would work out a schedule or let you submit a schedule that would permit you, yourself, to be off at that time?

A., I volunteered to fill in at any other time in any other department that I could to make up the time that I missed.

Q-9. If these orders are made up one (1) or one and a half (1-1/2) days, how would the orders be made up or filled if you were off at that time?

A., Well, I always made the orders up in advance. I planned my work to have this done by the end of the week or ether the, you know, on a forty (40) hour work week, Friday afternoon I would have all [87] this work done up and the schedules made out for Saturday work if it was necessary.

Q-10. Did you ask the Company if you might have a job other than Supervisor?

A., No sir, they told me that I could not be transferred because it would be a downgrade and that was out.

MR. BENNETT CLARK: Thank you, Your Honor.

CONTINUED INTERROGATION BY MR. BENNET CLARK.

Q-86. Mr. Cummins, you didn't ask, did you? Mr. Haddock just said that he couldn't but you didn't actually ask him for a downgrade, did you?

A., No sir, I never asked to be downgraded.

Q-87. Now, do you know what bookings are?

A., Well, I have a fairly good idea, I suppose. That's the sales as they come in from the sales representatives to our Company.

Q-88. And are goods at the Parker Seal Company produced as the bookings come in?

A., Yes sir, I suppose they are.

Q-89. Does your religion say that you must attend your church on every Sabbath or you must go out, or can [88] you attend eighty-five percent (85%) and remain in good standing?

A., If I have a valid reason for not being able to get there they would not disfellowship me or put me out.

Q-90. But work is not a valid reason?

A., No sir, in the twentieth (20th) chapter of Exodus it says, "you shall work six (6) days and on the seventh (7th) you shall rest". Saturday is the seventh (7th) day.

MR. BENNETT CLARK: I have no further questions for this witness.

INTERROGATION BY MR. FRED ANHOUSE.

Q-1. You say you were familiar with the Union contract that was presented as evidence?

A., Yes sir, at the time.

Q-2. What is the coverage in the contract, or is there coverage in the contract and the people coming under that contract as to time employees that they have to take off for religious reasons, are they allowed to do that?

A., Yes sir.

Q-3. Alright, what happens, do they get penalized by [89] less pay, or what?

A., No sir, they're not paid for the time they don't work.

Q-4. They're not paid, they're paid only for the time that they would work?

A., Yes sir.

Q-5. You drew pay though, you drew the same salary?

A., Yes sir.

Q-6. Even though you didn't work on Saturday. Did you offer the Company that you would take less for not working on Saturday?

A., No sir, I did not suggest that.

Q-7. How about this Mr. Webb that was filling in for you, had he been sick or had to take off on Saturday at anytime during this time?

A., Not that I recall, sir.

Q-8. Not that you recall. I don't know if this question would be in order. Would your conviction then have allowed you then to have — if he had taken sick, could, maybe, that you would have had to go in in an emergency status and had to do the job?

A., No sir.

Q-9. What are the hours that your services are held?

A., The scheduled hours are from 2:00 until 1:00 o'clock in the afternoon. Sometimes it runs over a little [90] bit longer.

Q-10. Let me ask you another question. What happened during the other holidays such as Easter and Christmas and so forth, do you observe them?

A., No sir.

Q-11. You don't observe them but you got paid when you took off on those holidays?

A., I drew a salary whether I —

Q-12. And was off in the normal part of the operation?

A., Yes sir.

Q-13. They were closed on those certain days?

A., Yes sir.

MR. FRED ANHOUSE: I think that's all.

MR. JAMES A. CRUMLIN: Dr. Lasley, do you have questions?

DR. A. R. LASLEY: Yes.

INTERROGATION BY DR. A. R. LASLEY.

Q-1. I'd like to ask Mr. Cummins, what effect did your absence have on production?

A., I don't think my absence on Saturday would have [91] effected production because of the scheduling and the training that the men under me had had. With the graphs and charts they knew that I knew whether they had worked or not on a Saturday and they were well trained to do the job and they did the job.

Q-2. I believe you said that one (1) gentleman volunteered to work when you were absent. Would this man be able to perform the duties essentially as you?

A., The only duties that he would have to perform in filling in for me would be to, should there be a breakdown or some emergency situation arise, he would call the Maintenance Department, and just to see that the personnel was on the job. The schedule was already made out, the material was already designated to its destination before the shift ever started.

Q-3. Where do you work now, Mr. Cummins?

A., I'm working in Lexington as a carpenter.

Q-4. What days of the week do you work?

A., I work Monday through Friday except on an annual holy day.

MR. JAMES A. CRUMLIN: Next is Mrs. Rosenbaum.

[92]

INTERROGATION BY MRS. IRVING ROSENBAUM.

Q-1. At some point, Mr. Cummins, you indicated that you took off on a Saturday just the amount of time it took to take your family to the church service. And I gathered you worked the rest of that Saturday, that was prior to your joining the church but when you still observed the holidays?

A., Yes ma'am.

Q-2. After you joined the church, though, you felt that it was necessary for you to be off the entire Saturday not just the hours of the service?

A., Yes ma'am, after becoming a member, why, I felt obligated in my own convictions to observe the Sabbath.

Q-3. In total?

A., Yes ma'am.

Q-4. Alright, the other question is a completely different question. Does the Union, do you know whether the Union contract prevents a downgrade?

A., I wasn't covered by the Union contract.

MRS. IRVING ROSENBAUM: Regardless, o.k. That's all.

[93]

MR. FRED ANHOUSE: Are you salaried now or are you working by the hour?

A., By the hour.

MR. FRED ANHOUSE: By the hour.

MR. JAMES A. CRUMLIN: What is the difference in salary?

A., Well, there's a considerable amount, close to three dollars (\$3.00) an hour as figured on an hourly basis.

MR. FRED ANHOUSE: Are you using a forty (40) hour basis?

A., I work forty-five (45) hours a week now.

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. I just want to clear up one (1) point. When you were talking about scheduling, and I think this is what you said before, but you scheduled the inventory for Saturday on the Friday before or Thursday, or it was done before that actual Saturday?

A., Yes sir.

[94]

Q-2. And then what, did the men just come in and follow the schedule that you had left?

A., Yes sir, unless there was an emergency or some situation come up for deviation, they followed those schedules.

Q-3. What do you do on your Sabbath as far as, what could be done?

MR. JAMES A. CRUMLIN: Well, I think we know.

MR. BENNETT CLARK: I think that's been covered, Your Honor.

MR. JAMES A. CRUMLIN: Yes, I think that's been covered.

MR. THOMAS L. HOGAN: Alright, I have no further questions.

MR. BENNETT CLARK: Your Honor, I just have one thing.

INTERROGATION BY MR. BENNETT CLARK.

Q-1. Mr. Cummins, you said the Union contracts had something to do with religion. Is this the section to which you referred? I'm reading from Article I, [95] Section 4, Non-Discrimination Clause. "The Company and the Union agree that for all purposes of this contract, there shall be no

discrimination because of race, creed, color, national origin, sex, age or marital status".

WITNESS: Would you repeat the question, please? Not what you read, just the question.

MR. BENNETT CLARK: You indicated that there was something in this contract relating to religion, that was the way I under --

MR. FRED ANHOUSE: I had asked him the question, was there anything in the Union contract -- of course, I know that he was not covered, but the other employees, were they allowed to take off on their religious holidays and what was their penalty for it. And he said, well they worked by the hour, they would only get paid for what hours they worked. They could take off if they had to.

WITNESS: They were not forced to work on, like, a Sunday and --

[96]

MR. FRED ANHOUSE: This was my understanding when he answered the question that I had asked.

MR. JAMES A. CRUMLIN: Any further questions?

REVEREND C. L. FINCH: Somebody said the reason why they didn't schedule Saturday work was because it was time and a half.

MR. BENNETT CLARK: Pardon me, sir, I said that's the reason we tried to avoid scheduling it.

MR. JAMES A. CRUMLIN: But sometimes it became necessary and you had to?

MR. BENNETT CLARK: Yes sir.

MR. FRED ANHOUSE: Did the plant work some Sundays?

A., In an emergency situation.

[97]

REVEREND C. L. FINCH: Did it happen very often?

A., I couldn't tell you exactly how many times, but if you had a major breakdown of a machine you may be forced into a Sunday situation maybe for one (1) Sunday or two (2) or three (3) in a row, depending on how serious the mechanical failure was.

MR. FRED ANHOUSE: Let me ask you this one (1) question. The people that, let's say, that would be observing Sunday as their Sabbath, if this situation occurred they would have to come in and take care of the situation so you could roll on Monday, right?

A., No sir, they would not, I had two (2) men

who worked under me who would not work on Sunday.

MR. FRED ANHOUSE: And what did the Company do about it?

A., Nothing, they granted them permission to be off.

MR. JAMES A. CRUMLIN: Any other questions?

[98]

MR. BENNETT CLARK: Yes sir.

INTERROGATION BY MR. BENNETT CLARK.

Q-1. Mr. Cummins, what rate was required to be paid to any employees, hourly employees, who worked on Sundays?

A., Hourly employees was double time.

Q-2. And Saturday it was time and a half?

A., Yes sir.

Q-3. Now then, isn't it a fact that when emergency work was scheduled for Sunday that employees who refused to work on Sunday, that is, hourly paid employees who refused to work on Sunday, were charged with their refusal to work on Sunday as overtime being worked for purposes of any future overtime they might want to work?

A., Yes sir, also, if they refused overtime on a Monday, Wednesday or a Friday or Saturday, yes.

Q-4. Isn't it a fact that they were treated the same as anybody else for anytime that they refused to work overtime?

A., Yes, they were treated exactly the same except they were not forced to work on their religious Sabbaths.

Q-5. But they were not accommodated, were they, in that [99] they were charged —

MR. THOMAS L. HOGAN: Objection.

MR. JAMES A. CRUMLIN: I think that's a legal opinion.

Q-6. It's a fact also, isn't it, Mr. Cummins, that Sunday work was never scheduled, Saturday work was scheduled overtime but Sunday work was not considered scheduled overtime, so people could choose whether they did or did not want to work on Sunday?

A., When the Banbury worked on a Sunday, normally it was scheduled by a posted bulletin not later than Wednesday afternoon.

Q-7. Those people who did not work were charged with overtime?

A., Yes sir.

MRS. IRVING ROSENBAUM: What does that mean? Charged?

MR. BENNETT CLARK: That means — I don't know if I can answer that or not.

[100]

MRS. IRVING ROSENBAUM: Can you ask the witness?

Q-8. What does it mean to be charged overtime, Mr. Cummins?

A., Well, we kept a running total of the number of hours of each employee's overtime, either worked or refused to work, so that we could treat them fairly as far as — if we only needed two (2) men and we had ten (10) of equal classification, we offered the overtime available to the lowest number of hours that the men had worked to try to keep it equal and fairly distributed. That was in the contract.

MRS. IRVING ROSENBAUM: So it was counted whether they refused or not?

A., Yes ma'am, it was just to fulfill the contract as far as an obligation the company had made.

MR. FRED ANHOUSE: Overtime began after how many hours of normal work?

A., Eight (8) hours a day, forty (40) hours to a week.

[101]

MR. FRED ANHOUSE: Alright, if somebody worked forty-one (41) hours — let's say, if he worked one day nine (9) hours and he worked the next day seven (7), would you get overtime for the nine (9)?

A., One (1) hour, yes, consists of overtime.

MR. FRED ANHOUSE: Even though he'd only worked seven (7) the next day?

A., Yes sir.

MR. FRED ANHOUSE: It wasn't the total hours of the whole week?

A., No sir, it was computed on anything over eight (8) hours —

MR. FRED ANHOUSE: Per day. How many hours did you work every day on the average?

A., It would just depend, I was always there at least eight and a half (8-1/2) hours, sometimes as many as twelve (12), thirteen (13) hours, depending on [102] what was necessary.

MR. JAMES A. CRUMLIN: Any further questions of this witness?

MR. BENNETT CLARK: No sir.

MR. JAMES A. CRUMLIN: That's all. Thank you so much for being here to testify.

* * * * *

[104]

The witness after first being duly sworn, deposed as follows:

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1 Would you state your full name and address, please?

A., Conley Saylor, Berea, Kentucky.

MR. JAMES A. CRUMLIN: How do you spell that Saylor?

A., S a y l o r.

Q-2. And what is your employment, Mr. Saylor?

A., I own and operate a supermarket.

Q-3. Did you at one time work at the Parker Seal Company?

A., Yes, for almost sixteen (16) years.

Q-4. And what period of time was that?

A., Oh, from 1955 till July the 1st, 1971.

Q-5. In what capacity were you employed?

A., Pratically all of them up to Plant Manager.

Q-6. And how long were you in the position of Plant Manager?

A., A total of about two and a half (2-1/2) years.

Q-7. And what would be the dates on that?

A., Sometime in 1969 to July 1st, 1971. I don't recall the exact dates of it, I think it was about [105] May the 20th, 1969.

Q-8. And this was in Berea?

A., No, about seven (7) or eight (8) months of this time I spent in Lexington.

Q-9. What period were you in the Berea plant?

A., From about May 20th, 1969 till November the 16th of 1970, I believe.

Q-10. And during that time was Paul Cummins employed there?

A., Yes, he was.

Q-11. And he was employed as the Banbury Supervisor?

A., Yes.

Q-12. So he worked under you?

A., Yes.

Q-13. And did you have any reason to have any conversation with Mr. Cummins about his religion?

A., I knew that Paul had been leaving at 1:00 o'clock on Saturday afternoon to take his wife to Lexington for some time. And, I guess, you could

say it was close to July of 1970 that Paul missed a couple of Saturdays. And he came to me one Monday morning and offered an apology to me for doing as he had done. Then he went ahead and told me that he had been converted into this World Wide Church and that he had been missing on Saturday for that reason. That it was now his belief that he would no longer [106] work on Saturday and he was very apologetic for not having told me in advance. And he went on to tell me, you know, that the decision was mine to make at that time, that I could either fire him, I could transfer him or do whatever I wanted to. That he would abide by what decision that I would make. At that time the Lexington plant was on strike and the Berea plant was trying to carry the whole load at that time. And I told Paul that, well, things being as they are and the situation that we're in, why, we would just go with that at the time and cross that bridge later down the road.

Q-14. Go with what?

A., With trying to relieve him on Saturday. Let him go ahead and be in charge of the Banbury operation through the remaining portion of the week. But Paul also told me at that time, he said, now, I won't work on Saturday at all but if you want me to I'll come in and work Sunday or any other hours that you ask me to irregardless of what they might be.

Outside of Saturday I'll work any hours that you request that I do so.

Q-15. And did you have any cause after that to ask him to work other hours, extra hours?

[107]

A., Well, at that time, Mr. Attorney, all of us was working from fourteen (14) or sixteen (16) hours a day. The Lexington plant being out of operation, there was no way that any of us could short cut to eight (8) hours a day. It was utterly impossible. And we were in the midst of vacation schedules for Supervisors, plus in June prior to that July we had had to lay off twenty percent (20%) of our operating force, so we were operating at a very low peak of management people at that time. And it was just impossible for anybody to try to get by on eight (8) hours a day. So, yes, Paul was, he was working from ten (10) to twelve (12) practically all that time as well as the rest of us.

Q-16. What arrangements were made as far as the Banbury operation on Saturday when Paul was not there?

A., Well, I don't recall those specifically but I was reminded out in the hall there while we were waiting that I had asked a fellow by the name of Lawrence Reynolds to cover some of this. And after I was reminded of it, I do recall it. And Chester

Webb said that I asked him to cover part of it, I don't recall that at all but he said I did. So many things was happening at that time that this didn't seem [108] nearly as important as trying to meet production schedules, as this did.

Q-17. Did you or do you remember that it was necessary to have an extra person come in, an extra Supervisor, to cover the Banbury Department on Saturday?

A., Really, I don't remember it actually, because it's always been kind of a set up down through the years that if the Banbury Supervisor was not there the Stock Prep. Supervisor covered both sides of it.

Q-18. And during this time did you have any second or third shift in Banbury?

A., During this time we had a second shift and I really don't recall if we had a third shift or not.

Q-19. Was there a separate Supervisor for the second shift Banbury?

A., Practically all down through the years the second shift Stock Prep. Foreman has looked after the second shift Banbury and so be it if there be a third shift.

Q-20. Why is that? Is it that it's not necessary to have a Supervisor in the Banbury?

A., Well, normally it's a three (3) or four (4) man crew and I don't think the Company could afford to have a Supervisor for three (3) or four (4) men.

Q-21. Was it necessary to have the Banbury Supervisor, [109] in this case Mr. Cummins, come in any earlier? Was there any overlap in shifts in the Banbury Department?

A., Paul's normal shift, during this period of time, would start normally around 7:00 o'clock of a morning and end somewhere between 5:30 and 7:00 at night. Now, there were times when he would come in early of a morning, say 5:00 o'clock and not necessarily to look after his own men but to see that everything was going well. To see, if there was people there on the third shift, that they were scheduled properly. And there was never a mandatory set up. Normally, if they had a third shift the Stock Prep. Supervisor would look after that shift. Or in some instances if the first shift came in at 3:00 o'clock or 5:00 o'clock in the morning the third shift Supervisor would also look after those. It was not mandatory that Paul come in the very exact hours that his first shift employees came in.

Q-22. Why is that? What exactly did Paul do as Supervisor of the Banbury?

A., Paul, as Supervisor of the Banbury at that point in time, he scheduled the total Banbury

operation, which included the rubber that was coming out of Winchester, [110] also directly supervised the first shift and correlate with the second and third shifts, if there be second and third shifts, correlate the schedules.

Q-23. So you say that he set up the schedules for all the shifts?

A., Primarily so, yes, they could be altered but he initiated the first schedule.

Q-24. How would you, in your position as Plant Manager, rate Paul as a Supervisor in the operation of Banbury?

A., Well, I would rate Paul as doing a satisfactory job. It's the position, the one he was doing then of scheduling Berea and Winchester, it was almost a thankless job to do it and it was very complicated and I thought he did a very adequate job in it.

MR. THOMAS L. HOGAN: I don't have anymore questions at this time.

INTERROGATION BY MR. BENNETT CLARK.

Q-1. Mr. Saylor, how long were you Plant Manager of the Berea plant of Parker Seal?

A., It was approximately from about May the 20th of 1969 up until sometime the 1st of October of 1970. The [111] upper echelon of Parker Seal Company had changed. The first upper echelon

person to leave was the Vice President and then the President and then the Division Manager and a new Vice President, Mr. Sample, came before it and he sent over John Barton as Acting Plant Manager sometime around the 1st of October, 1970.

Q-2. And was that when you went to Lexington?

A., No, it was about four (4) or five (5) weeks later, November the 16th was when I went to Lexington.

Q-3. Now, in your job as the Plant Manager, am I correct in saying that you had many opportunities to observe Supervisors?

A., Absolutely. Every day.

Q-4. And did you develop any sort of a philosophy as to what the job of a Supervisor was supposed to be in regard to the people with whom he was working?

A., Well, I think everybody has to develop that philosophy.

Q-5. Would your philosophy run anything like, a Supervisor's job is to supervise his people, to be with them?

A., I don't see how he could do anything else other than the circumstances may alter that a little bit. That would be just like saying to me, as Plant Manager, would have to be there twenty-four (24) [112] hours a day because I had a Supervisor on the third shift.

Q-6. Well, I'm talking with his shift, what would be a Supervisor's responsibility?

A., Well, I'd say it would definitely be, in most cases, that he would have to be there all the time.

Q-7. What should be his contact with the men who are his responsibility?

A., Well, it would definitely depend on the situation, it would have to be a person to person contact but sometimes you could delegate it through a second person.

Q-8. Mr. Saylor, Mr. Cummins has testified that apparently in April, sometime around there, 1969, and then you have testified this, he would take off the latter part of his shift to take his wife to church over in Lexington?

A., April, I couldn't testify to that —

MR. BENNETT CLARK: Well, the dates aren't that important.

WITNESS CONTINUES: But I know that it was for some period of time.

Q-9. And then approximately a year later, maybe a year and [113] several months later, he joined this church, as I understand it, or he told you that —

A., Well, it was some period of time later, I don't know how long. O.k., it was a pretty lengthy

period of time I know that he took off on Saturday when it was scheduled.

Q-10. Now, do you know what bookings are? Order bookings are?

A., I sure do.

Q-11. What was the method by which Parker Seal Company, which your plant in Berea, determined prior to the time that Mr. Cummins started going over to this church, let's say, in April of 1969, what method did the Parker Seal Company use to determine whether or not there would be Saturday work in the plant as a whole, if you will, and in the Banbury specifically, whether or not Saturday work would be required?

A., The schedules made in their department computes their work loads, are all computed each Wednesday and that was determined by that.

Q-12. By what?

A., The amount of work that the Division or the Kentucky operation had as a total.

Q-13. If you know, what was the Division work load based upon?

[114]

A., Well, it was based on the number of open orders in the shop plus out a certain period of time,

divided by the total number of days it would take to relieve those orders.

Q-14. Based upon essentially the orders that came in, the products to be produced?

A., Right.

Q-15. After Mr. Cummins joined the Church of God what was the basis for determining whether or not Saturday work or work on any other day be required?

A., Well, at that period of time, with the Lexington operation on strike, why, it was just an automatic thing that the Berea plant would be scheduled every Saturday. But —

Q-16. Well, let's take just a normal situation. Were there any changes in the method by which it was determined Saturday work would be necessary between the time that he joined the Church of God and after the time he joined the Church of God, were there any changes at all?

A., None that I recall.

Q-17. Mr. Saylor, do you remember that on a day somewhat likened to the day outside, when it was cold and dreary, Mr. Dutch Haddock and I came to see you [115] at your home in Berea, I think it was in December?

A., I recall that day.

Q-18. This was at the time, as I remember, when you were in the process of building your store?

A., Yes.

Q-19. We visited you in your living room?

A., Yes.

Q-20. I think it was in mid-morning, do you remember that occasion?

A., Yes, I do.

Q-21. And I told you that I was representing Parker Seal Company in a matter that was pending before the Human Rights Commission?

A., Yes sir.

Q-22. And that I was trying to talk to everybody to find out what the situation was. Do you remember at that time making a statement to Mr. Haddock and me that — to the best of my memory, and I'll try to quote it — "if I had remained at the Berea plant I would have had to do something because of the way Cummins' not working on Saturdays effected the other Supervisors"?

A., I think that that would have been the decision that any Plant Manager would have been faced with. That [116] eventually, even though with Paul sitting there, it would have been a decision that somebody would have had to make, whether it be me, Dutch or whoever it might be.

Q-23. What kind of a decision are you talking about?

A., A decision that effects his status at work. Now what it might be — now, don't ask me what that decision is because if I would have been making it, I don't know what it would have been. Whether it would have been transferred to some other job or what have you, or into another operation within the Company, I don't know. But I do think a decision would have to be made concerning that particular thing.

Q-24. Did you make the statement to Dutch Haddock and me because Cummins' situation of not working on Saturdays and apparently the holy days was effecting the operation of this plant?

WITNESS: Would you restate that?

MR. BENNETT CLARK: Yes sir. Did you say to Dutch and me, when you made that statement, did you say that because, of some manner, that Mr. Cummins not [117] working on was effecting the operations of the Berea plant?

A., No, I made that statement to you realizing that in under a situation like that that I think a decision would have to be made. Because it would have to effect, eventually, if Paul was excused every Saturday and somebody was obligated to fill in for him, I think that decision would have to be made because it would effect the operation of the plant.

Q-25. Now, Mr. Saylor, I want to ask you another question. Again, this was a statement that

you made to Dutch Haddock and me. I'm going to read what I remember it to be and you just indicate whether or not you remember saying it. You stated that after you left employment with Parker Seal that in July — the Summer of 1971, and I believe you said July, that you were walking down a street in Berea and ran into Chester Webb, whose name has been mentioned here and was a Supervisor in the Stock Prep. Department. And that, I don't know whether you said that he took you by the arm or what, but that he invited you in or you all went in for a cup of coffee at a restaurant and you sat there and talked. And that Webb told you that he, Webb, was tired of having to [118] work so many hours —

MR. THOMAS L. HOGAN: Objection, that's hearsay. Mr. Webb is going to be a witness.

MR. JAMES A. CRUMLIN: Well, he's asking him if he made that statement.

MR. BENNETT CLARK CONTINUES Q-25:
— when Cummins was not even working Saturdays?
Your Honor, my authority for asking that question —

MR. JAMES A. CRUMLIN: Go ahead and ask the question.

MR. BENNETT CLARK: — is the case of Jett vs. Commonwealth, 436 Southwest Second, 788, which states that where the other person who allegedly made the remarks —

MR. JAMES A. CRUMLIN: Mr. Clark.

MR. BENNETT CLARK: Sir?

[119]

MR. JAMES A. CRUMLIN: We have ruled.

MR. BENNETT CLARK: Alright, sir. I just don't want a question of correct conduct.

MR. JAMES A. CRUMLIN: Did you or did you not, sir, make that statement?

A., O.k. Yes, I was uptown and I run into Chester and he said, let's go have a cup of coffee.

MR. JAMES A. CRUMLIN: Did you or did you not make that statement? We don't want you to relate it again, did you or did you not make that statement?

A., Yes.

MR. THOMAS L. HOGAN: Could you repeat the statement? I thought Mr. Webb had made the statement.

MR. BENNETT CLARK: He did.

[120]

MR. JAMES A. CRUMLIN: He's asking him, did you tell us that he told you, on that occasion, that he was tired of working.

MR. BENNETT CLARK: That Mr. Webb said he was tired of working, yes sir. Do you want me to repeat the statement?

MR. JAMES A. CRUMLIN: Yes.

MR. BENNETT CLARK: He told Conley that Webb was tired of having to work so many hours when Cummins was not even working Saturdays.

MR. JAMES A. CRUMLIN: He said he told you that. What's next?

MR. BENNETT CLARK: Yes sir.

Q-26. Mr. Saylor, as a result of your experience as the Plant Manager at Berea, would you consider it good operating procedure when the first shift Banbury, which had how many employees?

[121]

A., Approximately ten (10).

Q-27. The second shift had how many?

A., Oh, four (4) or five (5), somewhere in that vicinity.

Q-28. Would you consider it good operating procedure when the first shift Banbury had to be covered by the Stock Prep. Foreman?

A., You know, you have circumstances like that that are never a good operation, but you also have a situation where you have two (2) shifts and they're scheduled twelve (12) hours a day and you expect the first shift man to stay over two (2) or three (3) hours into the second shift and it's pretty

ridiculous to require him to come in at 3:00 o'clock and work till 6:00 or 7:00 that night.

Q-29. Well, I'm talking about the normal times, is it good operating procedure to have Chester Webb cover for him?

A., Under normal times, why, the things operate very much differently. We were not operating under normal times at this point in time.

Q-30. But I'm talking about under just normal procedure. Just assume normal procedure, would it be good procedure to have the Stock Prep. Foreman on the [122] first shift having to also cover first shift Banbury?

A., O.k., let me restate. Let me rephrase it differently. Let's say that Chester Webb would be absent and Paul was still employed in Banbury, if Chester was absent Paul would have to cover Stock Prep.

Q-31. Was that good operating procedure?

A., Absolutely not, but when you're operating at a minimum of people, you know, you just can't pluck them out of the air.

Q-32. But it wasn't good operating procedure?

A., Why, absolutely not.

MR. BENNETT CLARK: That's all the questions I have.

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. When you say that it wasn't good operating procedure as you have indicated before, do you say it's not good operating procedure not to have separate Foremen in Banbury?

A., Look at it in this light, Mr. Attorney, we have two (2) Supervisors, one (1) to cover first shift Stock Prep. and one (1) to cover first shift Banbury. [123] If either of those people had to be away from the plant the other had to cover. And that's the way it has been for a number of years.

Q-2. As I understand it, you also had a second shift Stock Prep. Supervisor but not a second shift Banbury Supervisor?

A., Right.

Q-3. So the Stock Prep. always covered on the second and third shift because there was just no one assigned to Banbury?

A., That's true, with the correlation of the first shift Banbury Supervisor.

Q-4. After the time that Paul joined the church and was no longer working on Saturdays, while you were still Plant Manager, was there any noticeable decrease in the efficiency of the Banbury operation?

A., It was such a hectic time. There was not too many things that were obvious at that point in time because of this trying situation at that time.

Q-5. Do you remember any problems arising out of —

A., Not really, there could have been some problems among the people that was covering in Paul's place as —

Q-6. I'm talking about problems as far as the production [124] element of the Company, it's quite damaging to be responsible for the production output?

A., Well, there's always been problems with that Department, you know, period. It's been before that, it's been after that and I guess it will be, you know, for as long as the Parker Seal Company has a Banbury.

Q-7. But nothing related to —

A., Nothing related to Paul's situation.

Q-8. When you were saying that there — you said earlier that you knew that a decision would have had to be made about Paul?

A., Yes.

Q-9. Then you later related what Mr. Webb said to you, were you talking about a decision having to be made because of the effect on the other employees?

A., Absolutely, plus the effect that it could have on the Department.

Q-10. Did you receive any complaints about Paul not working on Saturday?

A., Not while I was there, no.

MR. THOMAS L. HOGAN: I have no further questions.

[125]

INTERROGATION BY MR. FRED ANHOUSE.

Q-1. How many Saturdays did the plant work per year? Could you give us an estimate?

WITNESS: During the year?

MR. FRED ANHOUSE: Yes.

A., Lengthy records indicate that approximately twenty-six (26) Saturdays a year are scheduled. Now, that is close but I don't state it as being the absolute.

Q-2. How many people work in the whole plant?

A., There are approximately six hundred (600) there.

INTERROGATION BY MR. VERNON JOHNSON.

Q-1. Mr. Saylor, from the time you became Plant Manager until you went to Lexington, now, during part of that time, if I understood the previous testimony as to Mr. Cummins' membership

in the World Wide Church of God, he was a full fledged member of this religious organization for several months during the time that you were Plant Manager, is that correct?

[126]

A., Well, it depends on what you mean by several. Let's say July, August and probably September.

Q-2. Say two (2) or three (3) months?

A., O.k.

Q-3. Now, at the time that he told you his reason for being absent on Saturdays and he wouldn't be able to work Saturdays because of religious beliefs, and you said, well, we'll just go for the time, or words to that effect, did you at that time have the authority to give that permission at that time?

A., Well, I thought that I did.

Q-4. Did your Superiors in Parker Seal Company know of your decision or did you tell them of your decision?

A., Mr. Johnson, I don't recall ever relating this to anyone. Now if I did, you know, Mr. Herman, the Personnel Manager there. I never recall relating this to anyone.

MR. VERNON JOHNSON: Thank you.

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. I have one (1) further question. You stated that there were approximately twenty-six (26) Saturdays [127] worked a year?

A., Yes.

Q-2. Of those Saturdays how many of those did just the Banbury work and not the Stock Preparation, to your knowledge?

A., I couldn't even wager an educated guess on that. I know that there are some.

Q-3. Well, was it a small number, a majority of them?

A., No, it would not be the majority of it, it would be a smaller number.

Q-4. Normally then if Banbury works, Stock Prep. works too?

A., Not necessarily, you know, it depends on, there again, back to the work load that the other attorney was referring to. It depends on the situation each Wednesday, that determination has to be made on each and every Wednesday.

MR. THOMAS L. HOGAN: I have no further questions.

DR. A. R. LASLEY: I have a few questions for this gentleman.

MR. JAMES A. CRUMLIN: Yes sir, Dr. Lasley.

[128]

INTERROGATION BY DR. A. R. LASLEY.

Q-1. Mr. Saylor, during the time you were the Plant Manager did your plant operate on Sunday at anytime?

A., No sir, I don't recall ever having to schedule somebody on Sunday. Now, there could have been, and was some voluntary employees that worked on Sunday, yes, there were. But as far as scheduling, why, I don't recall any. If it was it was it wouldn't have been over one (1) or two (2) people.

Q-2. What are the normal working days of the plant?

A., The normal working days is five (5) days a week, the sixth day is to recover what didn't happen in five (5). But there were a lot of six (6) day weeks scheduled to handle the work load.

MR. JAMES A. CRUMLIN: Any further questions?

MR. BENNETT CLARK: No sir.

MR. JAMES A. CRUMLIN: Thank you very much, Mr. Saylor. Mrs. Smith, did you have questions?

[129]

INTERROGATION BY MRS. BELLE SMITH.

Q-1. Well that man asked there, and I said, well, there's just twenty-six (26) Saturdays, weren't there?

A., That's not an absolute number, the twenty-six (26), but it's approximately and it's close.

Q-2. Well, he indicated he felt like it was always, which I heard you to say it wasn't. I wanted to verify it to satisfy in my mind it was approximately twenty-six (26)?

A., Yes.

MR. JAMES A. CRUMLIN: Any other questions? Thank you very much, Mr. Saylor.

* * * * *

The witness after first being duly sworn, deposed as follows:

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. Would you state your full name and address, please?

A., Oscar G. Fain, Mt. Vernon, Kentucky.

Q-2. And you're employed by the Parker Seal Company?

[130]

A., Yes sir.

Q-3. And are you related to Mr. Cummins?

A., Well, I'm his brother-in-law by marriage. I married his sister.

Q-4. How long have you been employed at the Parker Seal Company?

A., Ten (10) years in May.

Q-5. And what position do you hold there now?

A., Supervisor of Stock Prep. Department.

Q-6. What shift is that?

A., Third shift.

Q-7. And are you aware of the fact that Paul has been terminated from Parker Seal?

A., Yes.

Q-8. And to your own knowledge, do you know why he was terminated from Parker Seal?

A., Not really.

Q-9. And what is your position as far as it relates to the Banbury Department?

A., Well, we don't have a Banbury on third shift, is that what you mean?

Q-10. Was there ever a Banbury Department on third shift?

A., There has been but we don't right now.

Q-11. What do you do when you're the Stock Prep. Supervisor and there's a Banbury on third shift?

[131]

A., I'm in charge of Banbury on third shift?

Q-12. Is this standard procedure?

A., Yes.

Q-13. How many hours a week do you work?

A., Normally forty (40) hours.

Q-14. When there's a third shift Banbury operation what does your role as Supervisor of that Department entail?

A., Well, I'm in charge of the people and the production in that Department, in both Departments, Stock Prep. and Banbury.

Q-15. When you say you're in charge, do you schedule production in Banbury?

A., No. The Supervisor on the first shift schedules all the production, they schedule the work out and I'm just to see that it's done.

Q-16. And how much would you say of your time is spent, when you're the Supervisor in both Departments, how much of your time is spent in Banbury?

A., Probably twenty percent (20%).

Q-17. Now, do you work on Saturdays?

A., Yes.

Q-18. And what shift is that that you work on Saturday? This is in Stock Prep., right?

A., I work from 11:00 to 7:00 starting, it would be like [132] tonight, Friday night, from 11:00 o'clock until 7:00 o'clock Saturday morning.

Q-19. Have you ever had to work on Saturday afternoon?

A., Yes.

Q-20. And was this in Stock Prep.?

A., Banbury and Stock Prep. during vacations.

Q-21. And you supervised both?

A., Yes, I did.

Q-22. Now, I think at one (1) time there was — right around the time that Paul was fired, a few months preceding this, that would be last Summer, that there was quite a bit of overtime?

A., Yes.

Q-23. Did you work any overtime?

A., Yes.

Q-24. About how many hours did you work a week?

A., Well, some weeks seventy-two (72) hours, when we worked six (6) days, we worked twelve (12) hour shifts.

Q-25. And do you know what necessitated these long shifts?

A., Well, some of the Supervisors were on vacation.

Q-26. How many Supervisors are there in all?

A., I couldn't tell you right off.

Q-27. Were you aware that Paul was not working on Saturday?

[133]

A., Yes.

Q-28. Were you aware why he wasn't working on Saturday?

A., Yes.

Q-29. Did you have any conversations with Paul about the fact that he wasn't working on Saturdays?

A., No, not that I recall.

Q-30. Was any of the overtime that you were working, were you covering for Paul on Saturdays when he wasn't working?

A., Not necessarily, I don't think that I did,

no. See, I was on third shift at that time and he wouldn't have worked third shift anyway.

Q-31. Did Paul ever work for you when you were unable to come in?

A., Due to sickness, I think maybe he did one (1) week I was off three (3) days sick. Other than that I don't think so.

Q-32. Was he assigned to work this, if you know?

A., I don't really know that he did work. I just know that I was off and somebody had to cover, whether he covered or not, I don't know.

Q-33. Did Paul ever volunteer to work for you?

A., Yes.

Q-34. When was this?

A., It was last Summer, I can't tell you the exact date. [134] It was during those overtime hours, when I was working overtime.

Q-35. Did you ever ask him to work for you?

A., No.

Q-36. Why is that?

A., I didn't feel it was my place.

Q-37. Would you explain that, please?

A., I didn't feel like that it was my place to tell him to work for me.

Q-38. Well, was Paul then assigned to work for you, do you know?

A., Really I don't know whether he was or not. What do you mean by that?

Q-39. Well, were you told that Paul was supposed to cover for you?

A., I was told, I think that Mr. Haddock told me that Paul would fill in if I needed him, yes.

Q-40. And were you supposed to get Paul to fill in for you?

A., I don't know whether I was or not but I did tell Mr. Haddock that I didn't feel like that it was my place, if he wanted Paul to work to tell him and then he would work for him.

Q-41. Were there ever any specific times when Paul volunteered to work for you?

A., Yes, he volunteered two (2) or three (3) different [135] times.

Q-42. You say you felt it wasn't your place to ask him to do it?

A., Yes.

Q-43. Was there ever anytime when you did ask Paul to work for you specifically?

A., No.

Q-44. Was there ever a time when you were supposed to call Paul to work for you?

A., Yes, I told him one day that I might call him but I changed my mind, I didn't call him.

Q-45. Why did you change your mind?

MR. JAMES A. CRUMLIN: How far is this going?

MR. BENNETT CLARK: Your Honor, I'm sitting here trying to understand where this is leading.

MR. JAMES A. CRUMLIN: Alright.

Q-46. What's the procedure, if you know, when the Banbury operation starts early as far as who is assigned as supervisor?

[136]

WITNESS: What do you mean, the procedure?

Q-47. Was that — the Banbury shift is normally 7:00 to 3:00, the first shift?

A., Yes.

Q-48. Are there times when the Banbury shift starts before 7:00 in the morning?

A., Yes, on some occasions it starts at 5:00, the first shift does. On some occasions the second shift works over until 1:00.

Q-49. Now, do you know who supervises those extra hours in Banbury?

A., Sometimes I do and sometimes the Supervisor comes in.

Q-50. Has there been any problems among the Supervisors because of Paul's failure to work on Saturdays?

WITNESS: What kinds of problems do you mean?

MR. THOMAS L. HOGAN: Well, as far as was there any dissention among the Supervisors, was there any complaints?

A., Yes.

Q-51. What were those?

[137]

A., There was a few of the Supervisors that didn't feel like they should work for Paul on Saturdays.

Q-52. Did you feel this way?

A., Yes.

Q-53. Did you ever bring this to the attention of anyone at the Company?

A., Yes.

Q-54. Will you relate that to us, please?

A., Well, I talked to Mr. Haddock, Mr. Dutch Haddock, and he asked me how I felt about it and I

told him that I felt like that I respected Paul's religion but that if he was scheduled to work, he should work on Saturday.

Q-55. Was there any problem of Paul not working any other time but Saturday.

WITNESS: What do you mean by that?

MR. THOMAS L. HOGAN: Well, was there any other time when other people were working, other Supervisors were working when Paul wasn't.

WITNESS: Do you mean during the week?

[138]

MR. THOMAS L. HOGAN: Yes, besides Saturdays?

A., Not that I know of.

MR. THOMAS L. HOGAN: I think that's all I have.

MR. JAMES A. CRUMLIN: Do you have any questions?

MR. BENNETT CLARK: Just a couple.

INTERROGATION BY MR. BENNETT CLARK.

Q-1. Mr. Fain, if you know, what is the Company rule as to whether or not Foreman are required to come in with the hourly employees who

are assigned to their shift whenever the shift is working?

A., I don't know whether we have a rule like that or not.

Q-2. Well, do you know whether or not any sort of a notice was put on the board in March by Dutch Haddock stating that the Foremen would be on the floor when their men were on the floor?

A., I don't remember that.

Q-3. How many hours a week did you average during the [139] Summer of 1971, did you say?

A., 1971? For four (4) weeks straight I worked twelve (12) hour shifts. Four (4) straight weeks.

Q-4. Was that including Saturdays?

A., Well, we didn't work all four (4) Saturdays I don't think. But I think we maybe worked at least two (2) of them.

Q-5. You averaged seventy-two (72) hours a week then?

A., No, I say for at least two (2) of the weeks it was seventy-two (72) hours.

Q-6. At that particular time?

A., Yes.

Q-7. If you know, just from your observations, do you know how many hours a week Mr. Cummins was averaging then?

A., No, I don't really know. He worked, I'm sure he was only working five (5) days, now, how many hours he worked a day, I don't really know.

Q-8. Do you attend any church?

A., Yes.

Q-9. If I may ask you, what church do you attend?

A., Baptist Church.

Q-10. What day does that church have its preaching service?

A., On Sunday.

[140]

Q-11. Do you regularly attend church?

A., Yes.

Q-12. Have you ever been required to work at the Parker Seal Company on Sundays?

A., I think one (1) time, yes.

Q-13. Did you come in and work it?

A., Yes.

Q-14. Are you an exempt employee?

A., Yes.

Q-15. Which means what?

A., I don't get paid for Saturday and Sunday.

Q-16. What does it mean about working whenever you're called, is there any —

A., There's no more pay.

Q-17. You just work when you're called to work?

A., Yes.

Q-18. When you're scheduled to work?

A., Yes.

MR. BENNETT CLARK: That's all the questions I have, Your Honor.

MR. JAMES A. CRUMLIN: Any questions? Thank you so much, Mr. Fain, you may be excused. Would you call your next witness please?

* * * * *

[141]

The witness after first being duly sworn, deposed as follows:

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. Would you please state your full name and address?

A., Chester Webb, 507 Prospect Street, Berea, Kentucky.

Q-2. And you're employed by the Parker Seal Company?

A., Yes sir.

Q-3. In what capacity?

A., Supervisor of Stock Prep.

Q-4. How long have you worked there?

A., This makes my ninth year.

Q-5. Your ninth year?

A., Yes sir.

Q-6. And how long have you been a Supervisor?

A., I think six (6).

Q-7. What shift are you working as Supervisor?

A., First shift in Stock Prep.

Q-8. That would be the 7:00 to 3:00 shift?

A., Yes.

Q-9. Are you ever required to work overtime? More than forty (40) hours?

A., Yes.

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Q-10. Are you required to work on Saturdays?

A., Yes sir.

Q-11. This is in the same department, the Stock Prep. Department?

A., Yes, it is.

Q-12. Are you ever assigned to work or have you been in the past assigned to work overtime in any other shift besides Stock Prep, besides first shift?

A., Yes sir.

Q-13. When you work on Saturday in Stock Prep. do you also supervise the Banbury operation?

A., I don't now, no sir, I did.

Q-14. When did you do this actually? You did it and then stopped, what period did you do it?

A., Well, I don't know the exact dates. I did it when I came back into Stock Prep. I was in another department and brought back into Stock Prep. and Mr. Saylor said, the day they put me back in Stock Prep. he told me that Paul didn't work Saturdays and I would be required to work in the Banbury on Saturday to fill in.

Q-15. Were you ever required to work to supervise the Banbury operation when the Stock Prep. operation wasn't working on Saturday?

[143]

A., Yes sir.

Q-16. How often would you say that was?

A., Well, I really don't know, we'd get in spurts and we'd go a few Saturdays we'd work and some we wouldn't. I just don't know how many Saturdays, I didn't count them.

Q-17. Wasn't it usually though when Banbury worked Stock Prep. worked too?

MR. BENNETT CLARK: Object, leading question.

Q-18. Did Stock Prep. usually work when Banbury worked?

MR. JAMES A. CRUMLIN: Why not ask him to explain working conditions?

Q-19. When Mr. Saylor assigned you to work to cover for Paul Cummins on Saturday, did you have any objection to this? Did you voice any objection?

A., Well, I asked him if that would be all the time and he said, well, I'll give you an answer later on and the answer never did come because he was moved out to Lexington a little later on.

Q-20. But you continued to work after he had left?

A., Yes sir.

Q-21. And Mr. Haddock became the Plant Manager?

[144]

A., Yes sir.

Q-22. Did you ever complain to Mr. Haddock?

A., No sir.

Q-23. Was much of your time on Saturday spent actually working in the Banbury Department?

A., It was when Banbury was the only one scheduled, I stayed in the Banbury. But when I — when the plant and Banbury worked then I split it up. I spent more time in Stock Prep. but I'd have to go back and forth between the Departments. See, there was a wall between us.

Q-24. What did you do in the Banbury Department?

A., Well, he had their work scheduled out and I just went over there to make sure they were working and there wasn't nothing down, any machinery broken down or anything like that.

Q-25. So what would you estimate was the amount of time you spent on an average Saturday?

A., Well, I'd try to split it up. I don't think it would be half (1/2) but it would be pretty close to it between each department.

Q-26. You said you never did complain about Paul not working on Saturday?

A., Well, no, I didn't complain about working on Saturday, I just complained why I had to work [145] all of them to Mr. Hunt. I talked to him. Him and I had a conversation or two (2) about it, yes.

Q-27. Was this just in regard to Saturdays?

A., Saturdays when, just when my Department wasn't running. Because if you've got the dates there, I worked quite a few Saturdays when I didn't get off there because either Banbury was working or Stock Prep. was working.

Q-28. Did Paul ever volunteer to work for you on other days besides Saturday, overtime?

A., Well, now when we were in vacation schedule he came over and said, I'll help you out when you need me. So when I needed him I went over and asked him.

Q-29. And did he work for you?

A., Yes sir.

Q-30. Did you ever volunteer to work for Paul on Saturdays?

A., No, I told him what Conley said, that I was scheduled to work for him. But as far as me going over and saying Paul I'll work these Saturdays, no.

Q-31. Do you have any knowledge that Paul was assigned to relieve you when you needed relief?

A., No, the memo just read substitute. The memo put out on it and vacation seasons were going on and the [146] hours we were working and it said Paul would be a substitute but he worked mostly for me because I was the one asked him.

Q-32. Was Paul ever assigned to work for you, to substitute?

A., Not directly, no, as far as I know.

Q-33. Now, what, if you know, was the purpose of the memo? Was that assigning him or was that just —

A., Well, it said substitute, that meant for anybody that — me or the third shift Supervisor, which was Mr. Fain, or Charlie Owens or ever where someone needed.

Q-34. Well, did the memo say whether you were supposed to contact Mr. Cummins or whether he was supposed to contact you, or how was it supposed to work, if you know?

A., That I don't know, I just remember it said just substitute for Stock Prep.

MR. THOMAS L. HOGAN: I have no further questions.

INTERROGATION BY MR. BENNETT CLARK.

Q-1. Mr. Webb, do you remember that on one (1) or more occasions that I talked with you about this case?

A., Yes sir.

[147]

Q-2. And do you remember that I asked you if Mr. Cummins had ever offered to fill in for you during the Summer of 1971 and do you remember telling me that on one (1) occasion that you had to practically plead with him to relieve you because —

A., Well I told you that, but his wife had the car, but he did work for me. He didn't have no way of getting home but he did work for me. So, if she came and got him, I don't know. That was the only time, that one (1) time.

Q-3. Did he work for you on any other occasion than that?

A., Yes, I asked him and Paul worked for me.

Q-4. On what, one (1) other occasion?

A., No, Mr. Owens was on vacation and Mr. Fain got sick and if I'm not mistaken I think he worked, I just don't know the number of days, but three (3) or four (4) days because I was going in and putting in about thirteen (13) or fourteen (14) hours a day and then he would come over and relieve me after he left the Banbury. I don't know exactly how many days because I don't have a record of them.

Q-5. I believe that you stated you regularly covered, [148] if that's the right word, or filled in for Mr. Cummins in the Banbury on Saturdays whenever work was scheduled in the Banbury?

A., Yes sir.

Q-6. Did you receive any more pay for doing that?

A., No sir.

Q-7. During the Summer of 1971, let's take the period June to the last of July, do you know how many hours you averaged during the week during that period?

A., No sir, I don't. I just —

Q-8. To the best of your memory what did you average during July?

A., Well, who was on vacation at the time? Maybe I could have a more — was that when Charlie Owens was on vacation? That was the week that I worked the most, that's when Mr. Fain got sick and —

Q-9. How many hours did you work that week?

A., Well, I went in about 1:30 in the morning and I was working to about 3:30 or 4:00 in the afternoon then Paul would come over and take over then and I'd go home.

Q-10. There were only two (2) supervisors between the Stock Prep. and the Banbury?

A., There was only one (1), it was me at one time.

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Q-11. Between the Banbury and the Stock Prep. there was only two (2) Foremen?

A., Yes sir.

Q-12. Now then, when Mr. Owens was in the plant or when Mr. Fain was in the plant during that Summer do you know how many hours a week you were averaging?

A., We was putting in forty (40) hours a week when all three (3) was there, except for Saturday which would make it, you know —

Q-13. You were putting in how many hours on Saturday?

A., Eight (8) hours.

Q-14. You were working at least forty-eight (48) hours a week then?

A., Right.

Q-15. You stated that you did or did not volunteer for Mr. Cummins?

A., No, I didn't. Mr. Saylor did and I told Paul that I'd be working on Saturday for him.

Q-16. You were assigned to work for him?

A., Right.

Q-17. Do you know whether or not the Parker Seal Company in Berea has any rule as to whether or not Foremen are required to come in with the

hourly employees on their shift whenever that shift is working?

[150]

A., If it's a three (3) shift operation, you don't. If it's a two (2) shift operation we come in with our employees if we work. I think a memo was put out to that effect after Mr. Haddock took over also to remind us of it, I'm not real sure.

Q-18. To remind you of what, that you were required to come in with your men?

A., Right.

Q-19. Whenever they were on the job?

A., Right.

Q-20. You were required to come in?

A., Right. Now, on the three (3) shift operation, no. This is just a two (2) shift operation.

Q-21. During the Spring of 1971 did the Banbury work two (2) or three (3) shifts?

A., We had a three (3) shift going there for sometime but now I don't know exactly when it was and then we went down to two (2). I just don't know the dates.

Q-22. Are you a member of any church?

A., Yes sir, I'm a Baptist.

Q-23. What day does that church celebrate as its Sabbath?

A., Sunday.

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MR. THOMAS L. HOGAN: I'll object to this. I let this happen with the last person but I really don't see what —

MR. JAMES A. CRUMLIN: Didn't you bring this up?

MR. THOMAS L. HOGAN: I din't bring up what —

MR. JAMES A. CRUMLIN: You asked him what his religion was.

MR. THOMAS L. HOGAN: No, not exactly. No, he asked the other witness but I really don't know —

MR. JAMES A. CRUMLIN: Are you repeating the question? I know somebody has asked it before.

MR. THOMAS L. HOGAN: No, he asked the other witness.

MR. JAMES A. CRUMLIN: Well, we don't need to go into it anymore since he's already testified he's a Baptist and —

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MR. BENNETT CLARK: No, not this particular witness, that was the last witness, Mr. Fain.

MR. THOMAS L. HOGAN: I've let it slip by on Fain but I'm objecting to this on the grounds that his religion really has nothing to do with this case or this complaint.

MR. BENNETT CLARK: Your Honor, I submit that it has a great deal to do with it.

MR. JAMES A. CRUMLIN: You're charging here discrimination because of religion and he's trying to show that they did not discriminate because of religion.

MR. THOMAS L. HOGAN: Well, that's what he's trying to do but these men are of two (2) different religions so I don't really see where that would be relevant at all.

MR. JAMES A. CRUMLIN: Well, go ahead and ask him. I don't think there's any problem here.

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MR. VERNON JOHNSON: We didn't know what this man's religion was until he was asked. When you say that they are of two (2) different religions, it wasn't known until the question was

asked of the witness what his religion was, we didn't know but what they might have been of the same religion.

MR. JAMES A. CRUMLIN: Alright, go ahead.

Q-24. And what day does your church have its services?

A., Sunday.

Q-25. They don't have them on Saturday?

A., No sir.

Q-26. Have you ever been required to work on Sunday by the Parker Seal Company?

A., Yes sir.

Q-27. Have you ever missed any church services because of your work requirements?

A., Yes sir.

Q-28. When the Company required you to work on Sunday?

A., Yes sir.

MR. BENNETT CLARK: I have no further questions.

[154]

INTERROGATION BY MR. JAMES A. CRUMLIN.

Q-1. Is this against your religion?

A., Yes sir, but I worked it, when they said work, I worked.

MR. JAMES A. CRUMLIN: Any other questions?

MR. THOMAS L. HOGAN: I just have one (1) final question.

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. You stated that it is the Company policy that the Supervisors come in with their men?

A., On a two (2) shift operation, not a three (3).

Q-2. Normally I would think that the men would be scheduled to work the same shift, the 7:00 to 3:00, 3:00 to 11:00, whatever it is?

A., No sir, on a two (2) shift operation right now we've got — in our plant we've got screen sort and final working ten (10) hours a day. Their supervisor comes in with them of a morning at 5:00 o'clock. The second shift Supervisor comes in and works till 2:00 o'clock.

Q-3. Well, if you know, is this practice followed in the Banbury too?

[155]

WITNESS: Pardon me, sir?

MR. THOMAS L. HOGAN: Is this practice followed in the Banbury Department? Of the Supervisor —

A., Well, as far as I know. I mean, I've never worked in the Banbury other than just filling in, see. But as far as I know when you have a two (2) shift operation.

MR. THOMAS L. HOGAN: I have no further questions.

MR. JAMES A. CRUMLIN: Anybody else? You may be excused, Mr. Webb, thank you so much.

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MR. BENNETT CLARK: The charging party has questioned whether or not — you said you might not call two (2) of your witnesses, am I correct in that?

MR. THOMAS L. HOGAN: Well, I think a lot of the testimony will be [156] redundant and since the time is getting late we'll not call the whole list and we'll just have one (1) more witness.

MR. BENNETT CLARK: We would like to have just one (1) witness, if you would call Mr. Abrams to the stand. I think you should call him since he's been subpoenaed by the charging party.

MR. THOMAS L. HOGAN: We'll call Mr. Abrams, we will not call Mr. Owens.

The witness after first being duly sworn, deposed as follows:

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. Would you please state your full name and address?

A., Bobby L. Abrams, Route 2, Berea.

Q-2. And you're employed at the Parker Seal Company?

A., Yes sir.

Q-3. How long have you been employed there?

A., Approximately seventeen (17) years.

Q-4. And what is your position?

A., Supervisor in the Banbury Department.

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Q-5. How long have you held that position?

A., Oh, it's about six (6) months.

Q-6. And who did you replace?

A., Paul Cummins.

Q-7. Do you have any knowledge as to why Paul Cummins was terminated from Parker Seal Company?

A., Well, I asked him the day he left, Mr. Haddock the Plant Manager called me and told me to come in that Paul was leaving the Company and I asked Paul why and he said that it was because he wouldn't work Saturdays.

Q-8. Did Mr. Haddock or Mr. Cummins give you any other reasons besides that?

A., I never discussed it with Mr. Haddock.

Q-9. Did you after that time?

A., No.

Q-10. In the last six (6) months?

A., Well, maybe — now, Ken Hunt came around, oh, about two (2) months after Paul had left and said that wasn't the reason that he left, he said that he wouldn't work scheduled hours was the reason. That's what Mr. Hunt told me but Paul had been gone about two (2) months.

Q-11. Do you know what he meant by that, that he wouldn't work scheduled hours?

[158]

A., I didn't discuss it any —

MR. JAMES A. CRUMLIN: Sir, just a moment. I don't think this is necessary.

Q-12. What shift do you work, what hours?

A., The day shift, 7:00 to 3:00.

Q-13. Do you work on Saturdays?

A., Yes sir.

Q-14. Do you work every Saturday the Banbury works?

A., When it's scheduled, yes sir.

Q-15. Do you know if there's a foreman for Banbury on the second shift when there is a second shift?

A., Yes sir, the Stock Prep. Foreman covers it on the second.

Q-16. But there's no separate Supervisor?

A., No sir.

Q-17. Do you prepare the schedules for all the Banbury operation?

A., Yes sir.

Q-18. Do you come in on the shift with your men, are you there the full time that they're there?

A., Yes sir.

Q-19. Sometimes, Mr. Abrams, do you come in earlier than 7:00 o'clock?

[159]

A., When we're scheduled ten (10) hours I come in early.

Q-20. Now, is this the usual practice in the Banbury operation?

A., Well, it has been in every department I've been in, when the people work the Supervisor has to come in with them.

Q-21. Do you know that this has always been the practice in the Banbury operation?

A., Well, I don't know that it's always been because I haven't been closely connected with it when I've been in other departments.

Q-22. Were you told this when you went into the Banbury operation?

A., No, that — in the departments I'd been in that was always the understanding, when the shift came in early the Supervisor was expected to come in with them.

Q-23. Do you have any knowledge if Paul did this, came in early with his men?

A., I don't know. For the past few years I've been in other departments at the other end of the building and actually I didn't know whether Paul was there or not.

Q-24. Well, did you know much about the Banbury operation [160] before you became Supervisor?

A., I'd been over there about three (3) years ago on the second shift when Paul was on days, I was there about two (2) or three (3) months, I guess, on the second.

MR. THOMAS L. HOGAN: I have no further questions.

INTERROGATION BY MR. BENNETT CLARK.

Q-1. Mr. Abrams, approximately how many hours a day do you spend actively supervising your men, that is, not scheduling but supervising your men?

WITNESS: Out of the eight (8) hour shift?

MR. BENNETT CLARK: Yes sir.

A., I would say seven (7).

Q-2. Seven (7) hours?

A., Yes.

Q-3. And how many hours do you spend scheduling?

A., Well, I'd say maybe one (1) hour a day or something like that.

Q-4. Do you know if there are any departments, any other [161] departments in the Parker Seal Company at Berea where foremen in different departments are capable of covering for another department? That is, I think you have a Screen Sort Department and a Final Inspection or —

A., Yes.

Q-5. Do you have any departments like that?

A., Yes sir, Screen Sort and Final, I was there before I moved to Banbury and I was in charge of both departments on the second shift. But then on the day shift they had two (2) individual Foremen.

Q-6. Do you know whether or not at anytime that the day shifts in any of those departments would have to come in earlier than their regularly scheduled time, that is work overtime?

A., Yes sir, sometimes if we had to work ten (10) hours we would come in at 5:00.

Q-7. And do you know whether or not in those instances where the departments had to come in early if the Foremen would come in early with the people assigned to their shift?

A., Yes, the Foremen came in.

MR. BENNETT CLARK: I have no further questions.

[162]

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. Just one (1) further question. Do you know if the methods in the operation of the Banbury Department are the same now as it was when Paul Cummins was Supervisor?

A., Well, there may have been a few minor changes since Paul left but not very much different. I would say its pratically the same.

Q-2. You're doing pretty much what he did then?

A., Yes sir.

MR. THOMAS L. HOGAN: I have no further questions.

MR. JAMES A. CRUMLIN: Mr. Anhouse.

INTERROGATION BY MR. FRED ANHOUSE.

Q-1. How many Saturdays have you had to work in the last six (6) months since you've taken over the Banbury Department?

A., Well, I don't know exactly but —

Q-2. Approximately, if you can?

A., Approximately half (1/2) the Saturdays I would guess.

[163]

Q-3. You're talking about twelve (12) or thirteen (13)?

A., Yes, something like that.

MR. JAMES A. CRUMLIN: Any other questions?

INTERROGATION BY MRS. BELLE SMITH.

Q-1. How many men are under you?

A., Seven (7)

MR. JAMES A. CRUMLIN: Any other questions?

MR. BENNETT CLARK: No sir.

MR. JAMES A. CRUMLIN: Thank you so much, Mr. Abrams. Would you call your next witness, please?

* * * * *

MR. JAMES A. CRUMLIN: Show on the record that we're waiving the order and that Mr. Haddock, when he arrives, will be the complainant's last witness.

[164]

MR. BENNETT CLARK: Your Honor, the man that we're calling is also in management. We aren't really taking him out of order. As a matter of fact, the man we're calling is higher in management than Mr. Haddock is.

MR. JAMES A. CRUMLIN: Well, he hasn't finished his case. And, therefore, since he hasn't finished his case —

MR. BENNETT CLARK: Oh, he was going to call him as his witness?

MR. JAMES A. CRUMLIN: That's right. So now we're waiving that and we're suspending that to give you a chance to proceed and start with your witness.

(It was agreed by the attorneys for both complainant and respondent that the record would show the testimony of Mr. L. G. Haddock before that of Mr. Roy Kuhn.)

The witness after first being duly sworn, deposed as follows:

[165]

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. Would you state your name and address and your occupation, please?

A., L. G. Haddock, age fifty-six (56), I was a Plant Manager, I am now a member of the Division Staff of Parker Seal.

Q-2. And you were Plant Manager in Berea?

A., Yes sir.

Q-3. How long were you there?

A., A year and two (2) months, two (2) or three (3) months.

Q-4. What were the dates?

A., November, 70 until February, 72.

Q-5. And where were you employed before that, before November, 1970?

A., At the Third Street plant of Parker Seal in Lexington.

Q-6. And then you were transferred to Berea?

A., Yes sir.

Q-7. Was there any particular reason for that?

A., Well, our economic position, I would say, and the need, they felt the need — they might have also felt the need of some strong effort down in

Berea to try to help them get straightened out.

Q-8. Were they having problems in the Berea plant?

[166]

A., Well, there were economic problems and supervisory and we had to get them straightened out or we were on our way to being — folding it up.

Q-9. You said you were brought in then to —

A., I was brought down from Lexington. I had been Plant Manager up there for four (4) years.

Q-10. And when did you become aware of Mr. Cummins' religion?

A., Not until the Summer of 71 when we were having our vacation period.

Q-11. Did you work many Saturdays between November of 70 and the Summer of 71?

A., About half (1/2). We usually run about half (1/2) of them. Say two (2) a month, something like that.

Q-12. And did you know Mr. Cummins was not working?

A., I found out later, I can't say just when it was. It was down into the year. We had a meeting — I can tell you the incidence, we had a meeting on Saturday morning, I think it was. And we were

talking about possibly having to work Saturdays in the future because of the work load. And at that time someone, one of the Supervisors, mentioned that they would all be there except Paul. I said, well, what do you mean. And he said, well, Paul doesn't [167] work Saturdays. And that was my first knowledge. But as of when that date was, I do not know.

Q-13. Was it the Summer of 71?

A., Spring or Summer.

Q-14. Did you work Saturdays between November and that time?

A., Oh, yes.

Q-15. And you weren't aware that Paul wasn't working?

A., No, I was not.

Q-16. So you found out then in the Summer of 71 that Paul wasn't working because of his religion?

A., I found out he was not working first, then I found out later why.

Q-17. How did you find out why?

A., I asked how come.

Q-18. And he told you because of his religion?

A., No, he did not tell me, one of the other fellows did.

Q-19. When did you talk to Paul about it the first time?

A., The first time I talked to Paul about not working Saturdays and his religion was, it must have been July, August when we were having a heavy vacation schedule in the Stock Prep. Department. Because at that time it did become a problem.

[168]

Q-20. Was there any problem with the efficiency with the Banbury operation between November of 70 and the Summer of 71?

A., The efficiencies were not what we wanted, no. In fact, they were not when I went down there. That was one (1) department I had heard about before I went there.

Q-21. Was the efficiency low on Saturdays in Banbury?

A., It was on, I would say, compared to what we would have liked to have had it, it was low on both shifts on all six (6) days a week when we worked six (6).

Q-22. Did you ever personally work in the Banbury or supervise the Banbury on Saturday?

A., No, I did not.

Q-23. Did you go in the department?

A., Certainly.

Q-24. And you weren't aware that Paul wasn't working?

A., Not until later, no.

Q-25. Why was Paul Cummins fired from the Parker Seal Company?

A., Basically because he could not work Saturdays but it goes further than that, it was a fact that he was not co-operating with the fellows down in the Stock Prep. Department.

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Q-26. But basically it was because he wouldn't work Saturday?

A., This was the base of the problem, yes. The problem was that he could not work with the other Supervisors, or would not.

Q-27. What do you mean, work with the other Supervisors?

A., In the Stock Prep. Department which is adjacent to the Banbury, we had three (3) Supervisors, one (1) on each shift. During July and August of 71 we had a vacation schedule in which, during four (4) straight weeks, at least one (1) of those fellows was on vacation and during that time the other two (2) guys were covering twelve (12) hours a day and we were working six (6) days a week then. They were covering twelve (12) hours a

day, six (6) days a week, or seventy-two (72) hours each. And Paul at that time was working eight (8) hours a day, five (5) days a week. And I had complaints.

Q-28. With the exception of Saturday did Paul ever refuse to work any other hours or any other days?

A., Back in — it was in the early part of the year, Banbury was working ten (10) hours a day per shift. That meant the first shift came in at 5:00 o'clock in the morning. And Paul would not come in at 5:00 o'clock in the morning. He felt — looking [170] back I feel he felt his job was more scheduling than it was supervising the people because he refused to come in at 5:00 o'clock in the morning when his shift came in.

Q-29. Was that the normal procedure?

A., It is, it still is.

Q-30. I presume this is normal procedure for the Banbury man not to come in?

WITNESS: For the Banbury Supervisor not to come in?

MR. THOMAS L. HOGAN: Not to come in at 5:00 o'clock?

A., No, it was not. Every department, whenever their people were working they were expected to be there.

Q-31. And Paul refused to come in?

A., He did not come in. He did not outright refuse. I asked him to. I do not believe in giving orders to Supervisors, I suggest to them and expect them to work it out themselves. I feel by the time a man's gotten to be a Supervisor he should be man enough to even take care of his own department.

Q-32. Did you ever ask Paul to work on Saturdays?

A., No sir.

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Q-33. But you fired him for not working on Saturdays?

A., I asked him, I think it was two (2) weeks before he left, I asked him if there was any — I knew he had adopted this religion a year and a half or two (2) years ago or so, and I did ask him if there was any possibility of his being able to change his ideas or anything like that and he told me then that he was firmly fixed with his religion.

Q-34. Is that when you decided to fire him?

A., It was after that.

MR. THOMAS L. HOGAN: I have an affidavit.

WITNESS: I have a copy of it — his affidavit?

MR. THOMAS L. HOGAN: This is your affidavit.

WITNESS: Yes.

MR. THOMAS L. HOGAN: If there's no objection, this will be Complainant's Exhibit Number III.

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Q-35. In the fourth paragraph, the last sentence, and I quote; "I informed Mr. Cummins that neither I personally nor the Parker Seal Company had any objection whatsoever to his honoring his Sabbath Day and he would not be required to report to work at anytime on that day so long as he continued to honor it as the Sabbath."

MR. BENNETT CLARK: Your Honor, I object unless he sets the time period when that statement was made.

MR. THOMAS L. HOGAN: It says the early Summer of 71 in the affidavit.

WITNESS: We are not talking about, say the end of August.

Q-36. The affidavit says the early Summer of 1971. Now, didn't you just say the main reason Paul was fired was because of his religion and because he —

A., No, not because of religion, because he would not work Saturdays.

MR. BENNETT CLARK: I object to the way he worded —

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WITNESS CONTINUES: His religion doesn't bother me, didn't bother me at that time, one way or the other. The fact that he could not work Saturday did. We run a plant that operates six (6) days a week a good percentage of the time. Paul, in a responsible position, running a department, had to be there if that department was to function the way it should.

Q-37. Well, this affidavit states here and in another place that you didn't make a demand on him to work on the Sabbath, that you told him he didn't have to work on the Sabbath, and Mr. Kuhn has testified and now you've testified that the reason he was fired was because he wouldn't work on his Sabbath. Now, what I'm asking you is which of the statements is true, the one in the affidavit or the one you've made here today?

MR. BENNETT CLARK: Your Honor, I object because they're different periods of times, a change took place here obviously.

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MR. THOMAS L. HOGAN: On the second page of the affidavit at the end of the first paragraph, "I would like to reiterate that Mr. Cummins was never asked and no demand was ever

made upon Mr. Cummins that he work during his Sabbath", Now, I don't think that sentence leaves any leeway for the time period. I think never and no demand are pretty —

MR. JAMES A. CRUMLIN: Now, let's not argue back and forth with each other. We have seen the affidavit, we can read it and we hear what witness is saying.

Q-38. When you terminated Mr. Cummins you gave him this Change of Status Notice which has already been introduced into the record?

A., Yes.

Q-39. And I think the notation on there — would you please read that, the reason?

A., Unable to work all days scheduled for work. That is my work writing.

Q-40. And that was in reference to his failure to work on Saturday?

A., And his failure to work ten (10) hour days when [175] his department was scheduled ten (10) hour days.

Q-41. I think that when the complaint was filed and I called you and asked you why Mr. Cummins was fired the only reason that you gave me was because he wouldn't work on Saturday, is that true?

A., I have heard you say that that is true, I cannot recall exactly what I did say it was.

Q-42. Isn't that what this Change of Status Notice says? It doesn't say anything about extra hours on the shift. It says all days. It either means what it says or it doesn't. I think you said earlier —

A., And you do not count the ten (10) hour days during the week as days of work?

Q-43. Well you don't say hours, you say days, but I won't debate that point with you. But I think you said earlier —

MR. JAMES A. CRUMLIN: Mr. Hogan, excuse me for interrupting. Ask the specific question and not the individual pleadings.

MR. THOMAS L. HOGAN: Mr. Crumlin, if you please, I think this is one [176] of the problems in this case, is the fact that Mr. Haddock's story is somewhat changed. I'm just trying to find out exactly what the story is today. I think the Commission has —

MR. JAMES A. CRUMLIN: Then ask him specific questions that will point that out.

Q-44. You said earlier that Mr. Cummins, it was in the early part of the year, refused to come in early, two (2) hours early on the Banbury shift?

A., When his group was scheduled, yes.

Q-45. Why was he not terminated at that time?

A., Because that was the first instance I had run into where I had any doubts about him. And if I were to terminate a Supervisor everytime I had my first doubt about him, I would have a poor time keeping Supervisors.

Q-46. How would you rate Mr. Cummins as a Supervisor as far as the efficiency?

A., I would rate him — well, compared to the three (3) fellows you have talked to today, I would rate him about mid-medium with those three (3). He had possibilities of being better than he was and I [177] have seen worse.

Q-47. What would you say his weaknesses were?

A., Lack of co-operation with the other Supervisors was his worst one.

Q-48. Did this involve the scheduling of the shift they work?

A., No, this involves the williness — oftentimes when the Supervisor is sick or he has sickness in the family or something like that, I wouldn't even know about it until I heard that so and so is out and somebody else is filling in for him, four (4) hours apiece. And the only time that I know of that Paul volunteered and that was sort of a forced volunteer was when, during that four (4) week period when the two (2) guys were covering twelve (12) and twelve (12), Chester Webb got after him and told him that Oscar was sick. Oscar was one (1)

of the two (2) guys working a twelve (12) hour shift. Chester got after Paul and told him that Oscar was out sick, he could not cover, he had to have some help.

Q-49. Did you ever assign Paul to work a shift during the week which he refused to work?

WITNESS: What was that again?

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MR. THOMAS L. HOGAN: Did you ever assign Paul to work a shift or to substitute for somebody that he refused to?

A., I talked to Paul about — the big problem, as I saw it, was I could have just told Paul, yes, on Tuesdays and Thursdays you go down and relieve whoever was on the afternoon shift for four (4) hours so that they have a chance to go home, get their dinner and relax a bit. The big problem was the fact the way these fellows felt about Paul, he had to go down and volunteer to do it or we gained nothing except the fact that maybe the guy would get four (4) hours rest.

Q-50. Perhaps you could explain that, I don't understand, you had assigned the other people to work the shift why was Paul —

WITNESS: What do you mean I had assigned these other people to work the shift?

MR. THOMAS L. HOGAN: Well, I assumed that when the people were on vacation and the people had to work the twelve (12) hour shift somebody had to tell them they [179] had to work twelve (12) hours.

A., Yes, we put out a weekly notice.

Q-51. But Paul was not assigned to work a twelve (12) hour shift?

A., Paul was marked down at the bottom of that department as a substitute. And that was after I had talked to Paul about what I expected him to substitute as.

Q-52. What I'm saying is that you gave somebody else a list that said you work 7:00 to 7:00 on Tuesday, Paul was still working a 7:00 to 3:00 shift. Now the other two (2) men were working twelve (12) hour shifts, why wasn't Paul assigned a twelve (12) hour shift? That would have relieved the other men.

A., I thought I had covered that. We have trouble understanding one another, I can see that. I had talked with Paul at the start of this four (4) week period and told him that if he was to be able to work with these three (3) fellows down in Stock Prep., he was going to have to go down and volunteer to take over a four (4) hour period for them in the evening. My assigning him would have given them a four (4) hour rest during the [180] day,

one (1) day a week or two (2) days a week but it would not have helped his position with the other three (3) Supervisors.

Q-53. There's a problem, I can understand, but I don't understand what deep problem Paul had that he had to volunteer to another Supervisor to work?

A., Well, when I get complaints from two (2) out of three (3) Supervisors of a department because they are working seventy (70) hours a week and Paul is only working forty (40) hours a week, then I had a problem between Supervisors. In a group of seventeen (17) Supervisors, who I was trying to weld into a group, a team, you can't do that if one (1) of them is going to be a loner.

Q-54. Mr. Haddock, you were assigning the shifts to them, weren't you?

A., Do you want to see a copy of —

MR. BENNETT CLARK: I object, we have gone over and over and over this, I think —

WITNESS: If you were to read a copy of the notice would that help?

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MR. THOMAS L. HOGAN: No, but I — either I'm just not understanding you or —

MR. JAMES A. CRUMLIN: Gentlemen, gentlemen, as I understand the question simply is, were you responsible for assigning Supervisors to various hours that they worked?

A., Yes sir.

MR. JAMES A. CRUMLIN: Does that answer your question?

MR. THOMAS L. HOGAN: The Commission understands it but I still can't — If the problem was the other Supervisors didn't like the fact that Paul wasn't scheduled for work why Paul would have to go and volunteer to do the work?

MR. JAMES A. CRUMLIN: Well now, I think this is a statement maybe for you to make in the argument but to argue with this witness, I don't see the validity.

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MR. BENNETT CLARK: Your Honor, may we join with that objection as Counsel for the Respondent?

MR. JAMES A. CRUMLIN: You don't have to, you've already made your objection.

Q-55. Did Mr. Fain ever come and complain to you?

A., Yes sir.

Q-56. What was his complaint?

A., Well, his — Oscar had a dual problem, at the start of the year Oscar had been what we call a non-exempt employee, he does draw overtime. But sometime in the Spring of that year I changed Oscar from a non-exempt employee to an exempt employee, which is a higher rate, which is a higher base pay but they do not draw overtime. And then about a little while after that we get into this heavy overtime period and Oscar was a little put out by the fact that he was not drawing overtime. But his big gripe, as I listened to him, he came up to my office and unloaded on me one day, his big gripe seemed to be the fact that they were working seventy (70) hours a week and he knew Paul was making more than he was and he was working forty (40) hours a week.

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Q-57. Did he think that Paul should be working more hours?

A., Yes sir.

Q-58. Was he aware that Paul was scheduled as a substitute for him?

A., Yes sir, it was posted on the board and everybody got a copy of it.

Q-59. Was he supposed to contact Paul to substitute for him?

A., No, I had asked Paul to contact them. I did not tell them to contact Paul.

Q-60. Did Mr. Fain say that Paul ever had?

A., No, he did not.

Q-61. He didn't say that he had any conversation with Paul?

A., No. He might have and just not brought it up. He did not say anything to me about it.

Q-62. Is there a necessity for a Supervisor on the second shift in Banbury?

A., Well, we proved in January, I believe it was, we had a Management Trainee brought into the plant for a short time and put him on second shift Banbury. And he increased efficiencies in that department seventeen percent (17%) one month and up to twenty percent (20%) the next month. Yes, we could have used another [184] Supervisor in there but there was only five (5) people in there, it's pretty hard to justify a Supervisor for five (5) people as a standard part of your supervising group.

Q-63. Is the efficiency lower in Banbury on Saturday when there isn't a Supervisor just for Banbury?

A., I would have to look at my figures to be able to tell that. The efficiency varies so much day to day depending on what kind of work they're running, I don't know if you can take a look. We

had actually two (2) different types of operation in the Banbury, as Paul might have told you already, mixing and master batching and accelerating and it depends a lot on just what type of work they're doing just how their efficiency is. Did you have any particular Saturday you were interested in? All I have is just by date, I do not have by Saturday.

Q-64. Just if you could tell which of the Saturdays that Banbury worked?

MR. BENNETT CLARK: Your Honor, I am compelled to object because I don't really understand where this is leading.

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MR. JAMES A. CRUMLIN: Mr. Clark, I think what we have here, this is my personal opinion of it, I can get the opinion of the Commission members here if you want it, but it seems to me that we are hammering on a lot that is not really germane to what we're trying to decide.

MR. BENNETT CLARK: Your Honor, that's my point.

MR. JAMES A. CRUMLIN: Now, just a moment — now, we think that Mr. Haddock or perhaps Mr. Khun, they're both here, they are authorities at the plant, they ought to tell us without any other superficiality about it whether or

not they have discharged this man because of his religion or to tell us whether or not in discharging him they made every effort to work out their schedule at the plant to convenience him. And we think they this obligation. As we look at the statute and read other decisions we are of the opinion that the employer has an obligation to work [186] out some kind of relationship wherein he may be permitted to continue working and keep his religion. Now, if it can't be done then we'll hear now on this floor an explanation as to why it could not have been done. We want to know why he was not required to work some other hours during the week and someone else assigned to his position. We think that a complaint from one (1) or two (2) other employees that they have to work seventy (70) hours and he works forty (40) was a matter of lack of efficiency, perhaps not on Paul but whoever was responsible for assigning Supervisors. It looks like to me we ought to have some explanation as to why the other Supervisors were not assigned who didn't have this religious belief and if any effort at all was made to accommodate him in his religious beliefs. Now, this is what we're trying to ascertain here and if you have any proof to this effect I think it would help us all because thus far we can't quite understand yet why something wasn't done. We think maybe Paul was at fault too by not taking this [187] matter — control of it as they should have and worked it out. To say

that they're demanding today. I don't know how the Commission is going to feel about this. But somehow or another we ought to get to the crux of what we're talking about.

MR. BENNETT CLARK: Your Honor, if I may simply ask a question, but I'll be glad to wait if you want to go ahead, sir.

MR. JAMES A. CRUMLIN: You may ask your question.

MR. BENNETT CLARK: Alright. If I understand what you're saying, Your Honor — it's a question I want to ask of you.

MR. JAMES A. CRUMLIN: Alright.

MR. BENNETT CLARK: It's my understanding that you are stating that it is the Commission's interpretation [188] of the Kentucky Civil Rights Law that the employer is under an obligation to accommodate Mr. Cummins' religion by modifying its work schedules and its business if it can do so without undue hardship?

MR. JAMES A. CRUMLIN: Yes, if not then they ought to tell us what hardship it would work on the Company to do so and what efforts were made to work it out.

MR. BENNETT CLARK: In other words, Your Honor is saying that the Kentucky Commission of Human Rights will apply to this case the guideline

of the July 10, 1967, which is the Equal Employment Opportunity Commission?

MR. JAMES A. CRUMLIN: I don't want to speak for the whole Commission at this point until we have gone into conference on it. But we do feel that somewhere down the line we ought to have this kind of an explanation given to us. And we're hoping that we can do a fair and impartial job and we want to do that but we feel that somewhere you ought to give us some kind of something to put our teeth into.

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INTERROGATION BY MR. FRED ANHOUSE.

Q-1. I just wanted to ask Mr. Haddock a question. If Mr. Cummins had worked on Saturday would he still be with the Company?

A., It would depend on how he was getting along with the other Supervisors. Well, what answer do you — I'd be glad to give you the answer if I could understand what the complaint is.

Q-2. Well, what I'm saying is this, it seems to me the whole dispute seems to be on Saturday, it seems to be the big dispute?

A., Saturday was the base root of the thing, yes.

Q-3. What I'm saying is this, if the man had not changed his religion, if the man had gone on as he had done the years before and worked on Saturday as he had done the years before, he would still be with the Company assuming everything else being equal?

A., Assuming everything else being equal, if you mean by that that —

Q-4. Well, what I mean by everything being equal means that everything else —

A., Nothing else had come up, yes.

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MR. JAMES A. CRUMLIN: Do you have further questions?

MR. BENNETT CLARK: Yes, I do. I have very few.

INTERROGATION BY MR. BENNETT CLARK.

Q-1. Of the people, the men, the Foremen, required to cover for Mr. Cummins on Saturday were there certain men who would not otherwise have been required to work on Saturdays who covered for Mr. Cummins?

A., I don't believe — there were Saturdays — to have that happen Banbury would have had to have worked without the Stock Prep. Department working.

Q-2. Were there such Saturdays?

A., I don't know off hand if there were such Saturdays or not.

Q-3. Were the people who covered, if you know, Mr. Cummins, people who either practiced no religion or either practiced a religion with some other day than Saturday as their Sabbath?

A., As far as I know, yes. If they had religion it was practiced some other day than Saturday. But we do —

Q-4. Those people were selected for this job because [191] their religion was such that they didn't honor Saturday as their Sabbath?

A., They were picked because of their religion? No, I would have to disagree with you. If I understand your question.

Q-5. No, I'm not — but did not refuse to work because Saturday was not their Sabbath?

A., No.

Q-6. As far as you know?

A., No.

MR. BENNETT CLARK: That's all the questions I have.

MR. JAMES A. CRUMLIN: Do you have further questions?

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. I think you stated this, you said the person who worked covering Banbury was normally already working and would have been assigned to work in Stock Prep.?

A., If Stock Prep. was working, he would have been working in Stock Prep., yes.

Q-2. There wasn't any need to have an additional person except for the times that Banbury —

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A., Worked and Stock Prep. did not, yes.

MR. THOMAS L. HOGAN: I have no further questions.

INTERROGATION BY MR. JAMES A. CRUMLIN.

Q-1. Mr. Haddock, I do apologize to you if it seems that I'm not being a chairman, but I don't want — I would like to know from you please, sir, if we may, if you can tell us, from early Summer, and I take it that means June of 1971, up until that time the Company was very well pleased and satisfied with Mr. Cummins' employment record, were they not?

A., I would have to — with one (1) exception and that would be, it was back in the early part of

the year sometime, in the Spring, when I first found out about Paul not working, wouldn't work ten (10) hours a day when his shift was working ten (10) hours a day. Outside of that fact I would say, yes, his conduct was acceptable.

Q-2. He was drawing more money, I heard you to say, than Oscar G. Fain was drawing?

A., Yes sir.

Q-3. More than Chester Webb was drawing?

A., Yes sir.

Q-4. More than Bobby L. Abrams was drawing?

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A., Yes sir.

Q-5. These are all Supervisors?

A., Well, Bobby Abrams was not in the Stock Prep. Department.

Q-6. The other two (2) men were?

A., Yes sir.

Q-7. Did you ever order Mr. Cummins to work in either of these men's place in order that they might work for him on Saturday?

A., No sir.

Q-8. Was there any particular reason why this

was not done rather than work these men seventy (70) hours and him work forty (40) hours?

A., Well, his Department, during the week his Department was running too, I couldn't pull him — I would gain nothing by pulling him out of there and putting him in Stock Prep.

Q-9. They worked the same hours during the day?

A., They worked the same hours during the day, yes sir. It's like trying to play dominos and you've only got so many places to put them.

Q-10. There was no other place in the plant that he could make up the time or the difference for his hours off on Saturday?

A., No sir, because normally, by contract our normal [194] work week is Monday through Friday. On Saturdays we go to a fixed time and a half and we only work that when we have to. On Sunday we pass the days by contract when we pay double time. So we work very few people on Sundays, a minimum.

Q-11. It wasn't often that you had this Saturday work, was it?

A., I would say that we average about two (2) Saturdays a month. It depends, some parts of the year we work four (4). Year before last we ran from Memorial Day to Labor Day and worked every Saturday.

Q-12. And there was no way that the skeleton shift that you worked on a Saturday could be handled without his presence because of his Sabbath?

A., No, Saturday if we worked his Department, it was his full Department.

Q-13. Full Department?

A., It was not a skeleton. It might be just two (2) or three (3) departments out of the whole plant but if his Department were working it was the full Department.

Q-14. And you say that there was no way that this could be worked out so that he could have this time off because of his religious beliefs?

[195]

A., I could not find any way, I tried.

Q-15. What — I don't mean to be taking over the case but this is what we're interested in hearing, what efforts did you do to try, when you say you tried?

A., The only alternative open, to have him cover when his religion would let him cover, and would be on a Sunday but we very seldom work people on Sundays because of that double time in our contract.

MR. JAMES A. CRUMLIN: Mr. Anhouse, do you want to ask him?

INTERROGATION BY MR. FRED ANHOUSE.

Q-1. Yes, you made a statement that on the second shift when you had a Supervisor there for a short time that the efficiency had increased much in that small crew that you had?

A., Yes sir.

Q-2. Why — was it possible that he could have filled in part of that time on that second shift and keep the efficiency up and make up some of the time that he was lacking? It would have given you a Supervisor on the second shift part of the time too.

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MR. JAMES A. CRUMLIN: Did you understand his question?

MR. FRED ANHOUSE: Do you understand what I'm saying?

A., It's a possibility.

MR. FRED ANHOUSE: I mean, this is what

MR. JAMES A. CRUMLIN: He's answered, it's a possibility. Did you get his answer?

MR. BENNETT CLARK: Yes sir, there's a problem with this Supervisor. I think that Mr.

Anhouse hasn't — it will help if you explain who the Supervisor was and why he was there.

Q-3. I think we recall that he had come because the efficiency had slipped there and that somebody had been sent down to bring it back up, is that what you were going to say?

A., He was a Trainee, he was a Management Trainee, he was positioned up there to see what he could do with a little personal work but also it was a [197] training program for the Supervisor himself.

Q-4. Yes, but what I was thinking, due to the fact that even a Trainee going in that the efficiency had increased. At no additional cost to you this man could have been requested to put in additional time to a shift that was already in effect to keep the efficiency up?

A., Yes, the Management Trainee who was put in there for that one (1) month period or whatever it was, developed a very close personal relationship with that group of five (5) people on the second shift. If Paul had been able to maintain that close personal relationship, yes, there's a possibility he —

Q-5. I'm not saying he could work another eight (8) hours, he could have worked three (3), two (2) or four (4).

A., And if he could have maintained that personal relationship.

Q-6. You would have had that efficiency statement to compare it with?

A., Right.

MR. JAMES A. CRUMLIN: Any other questions?

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DR. A. R. LASLEY: Mr. Chairman, I have.

MR. JAMES A. CRUMLIN: Yes, Dr. Lasley.

INTERROGATION BY DR. A. R. LASLEY.

Q-1. I'm a little confused on one point here and I'd like for Mr. Haddock to clarify this. Was Mr. Cummins fired because he refused to work on Saturday or because he refused to co-operate with the other Supervisors?

A., It was a combination. Basically, I would say, starting out at the beginning — yes, it had to be because he could not work Saturdays, would not work Saturdays but to compensate for that he made no effort to go down and relieve these other fellows during the week who had to relieve him on Saturdays.

MR. JAMES A. CRUMLIN: Well, if they worked simultaneous shifts how could he have done that without Management making the adjustment in time?

A., The four (4) hours — he worked his shift until 3:00 o'clock, these fellows working twelve (12) hours were working from 7:00 in the morning until [199] 7:00 at night. What I asked Paul to do was go down one (1) or two (2) evenings a week, go down from 3:00 till 7:00 in the evening, let one (1) of these fellows go home, get some extra sleep, get a shower, get some — a little extra rest. Paul would have had to stay there a twelve (12) hour day.

Q-2. Mr. Haddock, who was responsible for firing Mr. Cummins? Do you accept the sole responsibility or were other people involved?

A., That happened to be my sole responsibility, sir. I was the Plant Manager, that was my job. I was the one directing a group of Supervisors and Foremen.

INTERROGATION BY MR. VERNON JOHNSON.

Q-1. Who made the determination to let him stay on as long as he did? Now, you were Plant Manager for quite some time there before you realized that he wasn't coming in. Now, from the time you realized that he wasn't coming in on Saturdays, what was it, about a year after you became Plant Manager before you realized that?

A., No sir, November till January, two (2) months.

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Q-2. Now, whose decision was it for him to stay on after that before some —

A., My decision.

MR. VERNON JOHNSON: Alright. Thank you.

MR. JAMES A. CRUMLIN: Any other questions?

INTERROGATION BY MR. BENNETT CLARK.

Q-1. Just one (1) question. Why did you change, Mr. Haddock, your decision of letting him stay on and terminated him, in part, because of this Saturday work situation?

A., Well, the original trouble I ran — the first doubt in my mind was this ten (10) hour bit, I could live with that, I felt. But when it came down to his interaction with this other group of three (3) Supervisors, the four (4) of them represented almost one quarter (1/4) of our Supervisory force, his effect on them and the way they were feeling, I had direct complaints from two (2) of them, that forced, actually forced me into a decision. I had to do something to get one quarter (1/4) of my [201] Supervisory force straightened out. I would — would it be alright if I asked a question?

MR. BENNETT CLARK: No, I don't think so. You can direct it to them but I can't answer it.

WITNESS: Mr. Commissioner, I have wondered — since, of course, I've had a lot of self doubts and everything else about this since it happened — is not an employer permitted to distinguish between the type of conduct they'd expect from an hourly employee, who is responsible only for his own actions, or for the actions of a Supervisor, who is responsible for the Department, and investment of thousands of dollars, and a group of people?

MR. THOMAS L. HOGAN: I think I'm going to object here. I think we both want to object to that question.

MR. BENNETT CLARK: I'm afraid I have to too. I don't think that we can cast that burden on the Commission.

* * * * *

[203]

EVIDENCE FOR THE RESPONDENT

The witness after first being duly sworn, deposed as follows:

INTERROGATION BY MR. BENNETT CLARK.

Q-1. Mr. Kuhn, would you please state your name and address and employment to the Commission?

A., My name is Roy Kuhn, I live at 2157 Lakeside Drive, Lexington, Kentucky. I am the General Manager of the O-ring Division.

Q-2. For what company?

A., Parker Seal Company.

Q-3. How long have you been employed by the Parker Seal Company?

A., I've been with Parker Seal for approximately a year and a half, with Parker-Hannifin for fourteen (14) years.

Q-4. What other positions in the Company have you held?

A., Well, I started as a Lab Technician and after I graduated from college I was an Engineering Technician, Project Engineer, Quality Control Manager and various other supervisory positions including

Plant Manager, Director of Quality Assurance and presently in this position.

[204]

Q-5. What were the responsibilities of your job at Parker Seal Company during the Winter and early Spring of 1970 and 1971?

A., Between October of 70 and August of 71 I was Manufacturing Manager, from August until the present time I'm Division Manager.

Q-6. Would you, just in a very brief comment, state how these responsibilities related to the Berea plant, if they in fact did?

A., Yes, I had full responsibility for everything that goes on in the Berea plant.

Q-7. Does that involve the actual operation of the producing of goods there?

A., Yes sir.

Q-8. Now, would you please state for the Commission whether or not there were any changes in the economic picture of the Berea plant in so far as the profit and production pictures were concerned for the period from mid 1969 until mid 1971?

A., Yes, the profitability of the Division, which includes the Berea operation, steadily declined between, actually I think it started declining in 68, late 68 and declined to a low ebb in 69, early 70.

[205]

Q-9. How did you gain your knowledge of these changes?

A., Through the divisional and corporate reports.

Q-10. Now, we know it had this effect in the operation of the Berea plant, let's talk about personnel changes, if any?

WITNESS: I'm not sure I understand the question.

Q-11. Was anything done to try to cause a turn around in the economic decline in the operation of the Berea plant.

WITNESS: Do you mean, did I take action?

MR. BENNETT CLARK: Or did the Company, if you know from your position in the Company, take action?

A., Yes I can only speak of the specifics from the time I was there, is that what you mean?

Q-12. Yes sir.

A., Yes, early in 70 — excuse me, in October of 70 there was a large layoff of both hourly and salaried employees. We were quite overstaffed for the output that the plant was producing.

[206]

Q-13. When you speak of salaried employees, of whom are you speaking?

A., All types of salaried employees, technicians, foremen. Most of the exempt salaried people in the Berea plant are supervisory people.

Q-14. If you know, what caused the economic problems at the Berea plant, from the experience of your experience?

A., Well, there were a number of factors. One (1) was the general economic picture in our whole economy. Another was the —

Q-15. When you say our economy, whose economy are you speaking of?

A., The United States, economy of the United States. The other factor is that the Berea plant in general had a fairly low, or it was my opinion that it a deteriorating morale factor and the output per person had dropped significantly in that period of time.

Q-16. Did you personally take part in any Company operation or any Company effort to turn around the Berea plant situation?

A., Yes.

Q-17. Would you just explain what you did?

A., Well, initially I made some personnel changes. [207] I changed the Plant Managers.

Q-18. What Plant Manager was replaced and what Plant Manager came in?

A., Mr. Saylor was acting Plant Manager at the time that I got the job and I moved him from Berea to Lexington and moved Mr. Haddock to Berea. In addition to that, I believe it was in December of 70, I spent a month in the Berea plant covering all three (3) shifts myself from approximately 8:00 o'clock until 1:00 or 2:00 in the morning.

Q-19. Pardon me. When you sent Mr. Haddock to the Berea plant to relieve Mr. Saylor did you instruct him as to what manner he was to operate the Berea plant?

A., Yes, not necessarily at that moment, but certainly there were many conversations between myself and Mr. Haddock concerning how a plant is to be operated, yes.

Q-20. Prior to, let's say, August of 1971 what instructions, generally speaking, did you give Mr. Haddock about rectifying what you believed to be a bad economic situation at the Berea plant?

A., Well, for one (1) I instructed Mr. Haddock to make the people aware, including all of our Supervisors, of the condition that we were in and that we were [208] not efficient. And to solicit and, in effect, to insist on longer hours, more personal interest, more involvement on the part of the Supervision.

Q-21. If you know, was the scheduling of Saturday work, particularly in the light of your Union Contract, was that considered a good business practice if it could be avoided?

A., No, we did not work Saturday unless our schedules demanded it because of the time and a half provisions.

Q-22. Was your Company paid any more for the products they produced on Saturday, by the customer, than the product produced on Friday?

A., No sir, there's no way of telling when the parts are made.

Q-23. So, if it was more costly to produce them on Saturday, the Company took the loss, not the customer?

A., That's true.

Q-24. Mr. Kuhn, are you familiar with an incentive program in operation at the Berea plant called the Cost Goal Program?

A., Yes sir, the Cost Goal Program is not just a Berea incentive program, it's an incentive program that's [209] corporate wide and has been in effect for as long as I can remember, as long as I've been with the Company.

Q-25. Mr. Cummins has testified that he was a member of or that he participated in the Cost Goal Program. Now, he has also testified that he was a Foreman and exempt salaried employee. To what

persons was the Cost Goal Program available or open?

A., Well the Cost Goal Program first of all is considered an honor to the degree that the only people who are offered this incentive are those people who exhibit leadership and interest in the Company's well being and who are in a position to directly effect profits.

Q-26. I believe that he became a member of the Cost Goal Program before he joined the World Wide Church of God when he would no longer work on Saturdays and certain holy days. Can you state what was required of members of this program? Once they were in it, what would be required of them?

A., Well, each individual is expected to treat the activities around him as though he were responsible. In other words, to take individual initiative, to work normally above and beyond the 8:00 to 5:00 [210] requirements of someone in a non-exempt priority capacity.

Q-27. Would there be more than one (1) Foreman at the plant who was a member of this program?

A., Yes sir, most of the exempt Foremen who have been with us for a reasonable length of time and show initiative are normally put on this program.

Q-28. If one (1) Foreman doesn't act with initiative or incentive does he personally suffer as opposed to the other members of the program? Does he lose anything on a pro-rated fashion or —

A., No, it is a group program.

Q-29. Were there any personnel or morale problems among the Foremen at the Berea plant during the Winter of 1970 and 1971?

A., Well, yes I would say there are always some morale problems with people. I would say that they were, to some degree, a little bit unsure of themselves because of the new style of management that we were trying to implement. For one thing I particularly expect my supervision to act more independently, I think, than in the past. In other words, I delegate responsibility and expect them to act with individual initiative and for the most part make decisions that previously they had been [211] instructed — where they had been instructed in the past.

Q-30. If a Foreman, an exempt Foreman, was a member of the Cost Goal Program and becomes aware of a situation where some other Foreman may need some relief, for reasons of fatigue or whatever, what was the policy developed under your leadership, if any policy was, at the Berea plant as to how that Foreman should react to that situation, that is, to relieve if he possibly could relieve the Foreman?

A., Well, in all instances we treat this thing as a team effort. We stressed teamwork in our Supervisory meetings and some of our Cost Goal meetings, that we pitch and expect to help each other out.

Q-31. Do you know whether or not any meeting was held that you attended or directed in Berea for the Foremen in the Winter of 1971, I believe it was?

A., Yes.

Q-32. Do you remember where that meeting was held?

A., Yes, at the Boone Tavern in Berea, Kentucky.

Q-33. Do you remember who attended?

A., I couldn't give you a complete list, I do remember most of the people who were there. I mean, if you gave me a name, I would give you an answer.

[212]

Q-34. Do you know whether or not Mr. Webb was there?

A., Yes, Mr. Webb was there.

Q-35. Was Charlie Owens there?

A., Yes, Mr. Owens was there.

Q-36. Was Mr. Cummins there?

A., Yes, Mr. Cummins was there.

Q-37. Was Mr. Fain there?

A., Yes.

Q-38. Was Mr. Abrams there?

A., Yes.

Q-39. Were there Foremen other than the people I've named?

A., Oh, yes. The meeting, as I recall, included — this meeting, I'm fairly certain this included all Supervision in addition to the Cost Goal candidates. So, most every one of the present Supervisors were at that meeting.

Q-40. What was the purpose of that meeting?

A., The purpose of the meeting was to better define the attitudes of myself and the new management to a degree, to explain our philosophy, to motivate, to try and allay any fears that the people had about their own jobs, to indicate to them that we were interested in performance. There had been some concern that the new management [213] was going to replace many of the old Foremen with new people and we wanted to let them know that we were interested in performance. And as long as each individual performed in accordance with his best ability that they did not have to be concerned for their jobs.

Q-41. You used the word performed, what do you mean performed, in practical terms?

A., In practical terms, to be decisive, to work hard, to show that they were interested, to put forth the extra effort that we felt was needed at that time, and still do feel is needed.

Q-42. Would working scheduled hours, or scheduled days, I'm referring to the Foremen working scheduled days, would that have anything to do with performance?

A., Oh, yes. Each Foreman is required to work whatever hours are scheduled in his Department and in addition to that there was considerable pressure, you might say, applied by myself to many of the people to motivate everyone and anyone to put additional time and effort into special projects, scrap reduction, methods improvements, clean up campaigns, whatever they could contribute to the improvement of the operation at that time.

[214]

Q-43. Were you ever actually at the Berea plant? I believe you testified you were in the Summer of 1970, 1971?

A., Oh yes, many hours.

Q-44. What was your purpose in going to the plant?

A., Well, initially, as I said, I spent over a month's period as many as sixteen (16) to eighteen (18) hours a day to try and — for one (1) reason to try and show that I was more than willing to work the same or more hours than I was expecting of the people that worked for me, and sort of set the pace, to become aware of what was going on down there, to meet all the people, to familiarize myself as much as I could with the problems of the plant.

Q-45. During that period did you work on any Saturdays?

A., Yes, I worked many Saturdays.

Q-46. Did you ever work any Sundays?

A., Yes sir.

Q-47. Did you work with any particular department in the plant, that is did you become involved with any particular department within the Berea plant?

A., Yes sir.

Q-48. Specifically, did you ever work in the Banbury Department?

[215]

A., Yes, I did.

Q-49. What was your purpose in working at

the Banbury Department and what did you do, if anything?

A., Well, one of the main reasons I got involved in detail with the Banbury Department is that there seemed to be a tremendous lack of consistency from day to day and from shift to shift regarding the efficiency and the output. Not only that, there was a significant difference between the output of the Berea Banbury and the Winchester Banbury. We have a manufacturing facility in Winchester that is almost identical to the Berea facility. And the production of the Winchester facility is almost, well, it's between forty (40) and fifty percent (50%) higher than the Berea facility.

Q-50. What specifically, if anything, did you do to try to rectify the difference?

A., I looked at the methods in the manufacturing of the rubber through the Banbury and tried to eliminate the limiting factor in each of the production steps. In other words, concentrate on the most obvious delays and eliminate those and then go on to the next.

[216]

Q-51. Was the Department improved, the efficiency improved?

A., Yes sir.

Q-52. Significantly?

A., Yes sir, specifically there seemed to be a significant improvement on the second shift. Initially the first shift was producing almost thirty (30) to fifty percent (50%) more than the second shift and we brought the second shift up almost to equalize the first shift.

Q-53. Did you ever make any effort to determine why the second shift was not initially producing up to the efficiency of the first shift?

A., Well, there were many factors. We had a problem with one of the hourly employees, I think that one of the reasons is that they were not getting enough direction. And I would say that some of the methods changes that we put in had a major bearing. Also I assigned, at one time I assigned a Management Trainee to a number of weeks in the Banbury to assist us in there.

Q-54. Is he still on the second shift in the Banbury?

A., No, he's not.

Q-55. Is there a Foreman now on the second shift in Banbury?

[217]

A., No, there's not.

Q-56. Do you know why there's not?

A., Yes, because the number of people on the Banbury and the activity there doesn't warrant or actually we cannot justify a full time Supervisor for that many people.

Q-57. That is, on that particular shift?

A., On that particular shift.

Q-58. Do you know whether or not Saturday work is now being scheduled for the Berea plant, for the Banbury Department particularly, at the Berea plant from time to time?

A., Yes, we are scheduling from time to time Saturday work.

Q-59. What determines whether or not Saturday work is scheduled in the plant?

A., The workload that is presented to the plant from our Inventory Control Department. By that I mean, we have a very short lead time in our business and when orders are —

Q-60. What's a short lead time?

A., We have to deliver in a very short period of time after we have received an order. So that when orders pick up we have to respond very quickly and the workload is calculated by our Inventory [218] and Production Control Departments and assigned to the plants by size of ring and compound.

MR. BENNETT CLARK: That's all the questions I have, Your Honor.

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. You say that the production was off in 70, 71?

A., No, I said that the production had declined from 69 — actually 68 into the time that we came in 1970.

Q-2. What month was that in 70?

A., I arrived on the scene in October of 70.

Q-3. Until August of 71?

A., Until today.

Q-4. You're still —

A., I'm still with Parker, I was never stationed in Berea.

Q-5. Were there any major changes made in the Banbury Department, you mentioned something about methods changes?

A., I wouldn't — the word major is difficult to define. We made changes in the Banbury area, methods changes [219] with the existing equipment. For instance, we added, at one time, a table and had our material cool off on a table and attempted to speed up the process by having one batch cool while the other batch was being chopped up in our choppers.

Q-6. Well, were these changes the factors that led to the increase in efficiency of production?

A., I think they were one (1) of the factors, another factor, I think, was the mere attention that was given to all the details in the Banbury.

Q-7. Did you have any personal knowledge of Paul Cummins and how he performed in the Banbury operation?

A., Yes sir.

Q-8. What was that?

A., Well, with my exposure to Paul I felt that Paul was an interested employee and willing to co-operate.

Q-9. Was there any question about his efficiency, his competency to run the Banbury Department?

A., At the time I would say that I didn't have enough knowledge of the Banbury Department, what was required of all the Banbury Department, to say [220] that he was a good Banbury Foreman. I thought that Paul was one of the stronger Foremen that we had.

Q-10. I think you mentioned something about the difference in — I think you said lack of consistency in the efficiency between the first shift and the second shift. And you think this, as I understand it, this had to do with the fact that

there was not a Supervisor present on the second shift?

A., Partially.

Q-11. Is there now a Supervisor on the second shift?

A., No, there's not, not for the Banbury.

Q-12. And this is strictly for the economic reason there would not be enough men to justify this?

A., Well, that is the major reason. One (1) of the factors is that the efficiency has never gone back down since the time that we were there. In other words, we didn't backslide. And so it doesn't warrant having a full time Foreman for that many people in that Department.

Q-13. So it really had to do with the methods changes that improved the efficiency more so than the personnel changes?

A., No, I wouldn't say that. I would say it was partially due to the fact that we made some [221] methods changes and partially due to the fact that I spent so much time on it. I worked with the people and the Foreman that I assigned to it worked with the people, organizing their activities and indicating to them that we were interested in what they were doing. And we resolved, I think we resolved a lot of morale problems on the second shift.

Q-14. Would you be more specific about the morale problems, what they were? Are you talking about all the employees or are you talking about your Supervisors?

A., No, I was talking about the hourly employees. We didn't have a Supervisor on the second shift in the Banbury.

Q-15. Well, I'm talking about in general, you were talking about morale problems in the plant?

A., Yes sir.

Q-16. Were there morale problems among the Supervisors?

A., I would say off and on there were morale problems, yes.

Q-17. In relation to what?

A., In relation to, I would say it was more of a fear that the older employees were going to be replaced by people that I would bring in from the outside.

[222]

Q-18. Did you replace any of the Supervisors?

A., Yes, we did.

Q-19. How many were there?

A., Off hand I would say approximately three (3).

Q-20. Were they replaced by new people, have they been as of now?

A., Yes.

Q-21. All three (3) of them have?

A., Yes.

Q-22. Were there any Supervisors who weren't replaced?

A., Well, now you're asking me to answer a question that expands a time frame of sixteen (16) months. The circumstance have changed significantly over sixteen (16) months. If you'd rephrase the question I'll —

Q-23. What is the difference in the number of Supervisors you have today and which you had when you first went to the Banbury plant?

A., I couldn't tell you exactly. I would say that we probably have a few more Supervisors today than the day that I got there. We have less Supervisors than the prior time to the time that I was there, because a number of Supervisors were laid off before I got there.

Q-24. Were there any Supervisors laid off in the Winter of 70?

[223]

WITNESS: The Winter of 70. Would you tell me what months you consider Winter?

MR. THOMAS L. HOGAN: November, December.

WITNESS: Laid off?

MR. THOMAS L. HOGAN: Or fired or terminated?

A., I can think of three (3) Supervisors. I don't remember if it was in November or not but I can think of three (3) Supervisors who left our employ during —

Q-25. Do you remember their names?

A., Yes, Allen Stanley was one, Mary Casey, and Bill Bowling.

Q-26. Now, were these three (3) people immediately replaced?

A., I wouldn't say immediately. They were replaced, yes. We changed the organization significantly during that period of time.

Q-27. Was a Jim Bowling fired?

A., No sir.

[224]

Q-28. Did he quit the Company?

A., I don't know exactly what his termination notice said but as I recall there was a conflict in his outside activities and he was asked to come to grips with the problem of whether or not he was able to work for the Company and give us his full interest. I don't think he was fired he was released and I

think he was given the option to resign of his own will.

Q-29. So, I guess then after these people were dismissed it was necessary for the other Supervisors to take up the slack, wasn't it?

A., Yes sir.

Q-30. And work additional hours?

A., Yes sir.

Q-31. So, actually before when you were talking about getting more involvement from the Supervisors, this is what you were expecting, you were expecting them to give more than just forty (40) hours a week?

A., No question about it, yes.

Q-32. Now, in regard to this Cost Goal, Mr. Clark asked you if Mr. Cummins was a member of that Cost Goal Club at the time he joined the World Wide Church [225] of God, I believe you answered yes?

A., I wasn't asked that question. I think that's correct, the timing was right. I would say that's true, but I don't believe I was asked that question.

Q-33. So, actually the Cost Goal group, the people who are allowed to join that are the people who are going to dedicate themselves to doing more than just, let's say, forty (40) hours a week work?

A., Yes, that's part of the requirement.

Q-34. If you had known that Mr. Cummins, or Management had known, were a member of this church and would not work on Saturdays would he have been allowed to join the Cost Goal group?

A., I would say that any person who was in a position where he could not fulfill the obligations of a Supervisor as our business requires would not be normally put on that type of a program.

Q-35. So when he would not work on Saturday he could not --

A., I didn't say that, that question has never arose.

Q-36. Well, I'm asking, would someone who refuses to work on Saturday be allowed to join?

A., Well, you're conjecturing now. I couldn't answer [226] that question because the problem has never been approached. I've never been asked that. I've never been forced to make that decision so I can't answer that question.

Q-37. How much effect do you think it has on the efficiency of Parker Seal Company if there is not an individual Supervisor in the Banbury Department on Saturday?

A., I would say it would probably be the same as any department that would operate without a Supervisor, it has an effect.

Q-38. Does it have the same effect on the second and third shift when there's no Supervisor?

A., We don't operate the Banbury on the third shift.

Q-39. Well, when its operated on the second? And I think it was your testimony earlier that sometimes it is operated on the third?

WITNESS: I'm not sure I understood the question.

Q-40. My first question was, how much effect on the efficiency does it have if there is not a full time Supervisor in the Banbury Department on Saturday?

A., I couldn't tell you exactly because I don't know.

[227]

Q-41. But I assume you think it is important that there be a Supervisor there?

A., I think that it's important for every department to have supervision, yes. I don't think it's important -- or I should say, I don't think we can afford to have a second shift Banbury Supervisor. We have only four (4) employees on the second shift.

Q-42. When Banbury works on Saturday does it always work a full shift, I mean the full Department is there?

A., To my knowledge, I'm not sure about that.

Q-43. Would there be any times when there'd be, say, only four (4) or five (5) men working on Banbury on Saturday?

A., I honestly can't answer that question, I don't know.

Q-44. So, would it be fair to say that the Company can afford to have a Supervisor in Banbury on Saturday if they're already using a Supervisor they've got, whereas on week days they would have to get an additional Supervisor? In other words, it doesn't cost the Company anything to have a Supervisor work Saturday in Banbury?

A., It doesn't cost the Company any additional to work [228] any Supervisor, it never costs any more to work any Supervisor Saturday, what costs us more is to work the hourly employees Saturday.

Q-45. But it would cost you more to have a Supervisor for the second shift?

A., For the second shift, that's correct.

MR. THOMAS L. HOGAN: I have no further questions.

INTERROGATION BY MR. JAMES A. CRUMLIN.

Q-1. Mr. Kuhn, do you know the reason why Paul Cummins was discharged?

A., I think I do, sir, yes.

Q-2. Can you tell us why he was discharged?

A., He was discharged because his refusal to work on Saturday was causing considerable consternation and problems with the rest of our employees who were being required to work a full shift.

Q-3. Do you know the reason why he couldn't work on Saturdays?

A., I was told the reason why he couldn't before he was terminated, yes.

Q-4. What was the reason?

A., That his religion prevented him.

[229]

Q-5. Was any effort made by the Company to work out the shifts so that he might carry on as an employee of the Company in conformance with his religion?

A., Sir, we operate the plant around the clock, twenty-four (24) hours a day. The Banbury works two (2) shifts and on occasion works Saturdays. If you're asking did we try to schedule Sunday instead of Saturday to accommodate Mr. Cummins, no, we did not.

Q-6. Who was it that complained about his not working Saturdays?

A., I am not aware initially of a complaint. My first involvement in this was when Mr. Haddock advised me that Paul was not working Saturdays.

refused to work Saturdays and that he was approaching him with that problem and that termination was possible. I did not ask at that time who was complaining.

INTERROGATION BY MRS. BELLE SMITH.

Q-1. He took Haddock's word for it that that was the case?

A., Since he is my Plant Manager, yes.

Q-2. But you did say that there was complaints?

[230]

A., Yes.

Q-3. You've just got that one (1) man Mr. Haddock that said it wasn't satisfactory?

A., Mr. Haddock is the one that made me aware of the complaints, yes.

INTERROGATION BY DR. A. R. LASLEY.

Q-1. Mr. Kuhn, is it the policy of your Company to terminate the contract of any employee who refuses to accept extra overtime work for any reason?

A., You have to differentiate, sir. Are you talking about hourly, salary, or whatever? I would say that the Company doesn't have a written policy,

as such. We expect all employees to work our schedule and I would say that any employee that refused to work our schedule would be subject to dismissal, yes, any employee.

INTERROGATION BY MR. FRED ANHOUSE.

Q-1. How about Sunday, have you ever had to schedule Sundays?

A., We have on occasion in emergency scheduled Sunday but I couldn't tell you exactly when or what was —

Q-2. What would your attitude be if you had people who [231] refused to work on Sunday?

A., I can't answer that question because I don't know the —

Q-3. Well, I'm just giving you a hypothetical case?

A., Alright, I'll give you, as best I can, a hypothetical answer. If I had an emergency in which I felt justified to ask someone to work, one of my salaried people, to work Sunday and he refused me. I would say that unless there were extremely extenuating circumstances I would be upset and if this sort of thing were indicative of his attitude then I would probably take some kind of disciplinary action. I have never had to ask my employees to work Sunday. Most of my employees, the ones I deal with

directly, are aware of the needs of the Company and normally volunteer on Sundays.

Q-4. What would your attitude be if you had to work on Christmas and somebody refused to work?

A., I find that difficult to answer, I've never had to work a Christmas. I would say, however, that if there were an emergency as far as Christmas was concerned, first of all, I would be willing to work Sunday and I have confidence that most of my Supervisros would also be willing to work.

[232]

Q-5. Would you reprimand them if they couldn't?

WITNESS: Pardon me?

MR. FRED ANHOUSE: If they refused what would you do, would you reprimand them?

A., I think I would have a talk with them, yes sir.

INTERROGATION BY MR. THOMAS L. HOGAN.

Q-1. Was Mr. Haddock the only person that you talked to about the problems with Mr. Cummins?

WITNESS: Prior to his dismissal or —

MR. THOMAS L. HOGAN: Prior to his dismissal.

A., Yes.

Q-2. And Mr. Haddock told you that Mr. Cummins would not work on Saturday because of his religion?

A., Yes.

Q-3. And that's the reason he was terminated?

A., Yes.

[233]

MR. THOMAS L. HOGAN: I have no further questions, Your Honor.

INTERROGATION BY MR. VERNON JOHNSON.

Q-1. If Mr. Haddock had not brought the problems about Mr. Cummins to you, would Mr. Haddock himself have had the authority as Plant Manager at Berea to make the decision whether to go along with Mr. Cummins or whether to terminate Mr. Cummins, or would that decision had to have been made at the Division Management level?

A., Well, I would say that as far as my wishes would be concerned that I am always anxious to know of any special arrangements with any employee. If he took it on himself to not advise me then certainly he's taking the authority himself.

Q-2. But he would have the authority if he assumed it? He would have the authority to term-

inate an employee or to keep an employee without consulting the Division Manager?

A., Well, any termination is reviewed by more than one (1) person. We're very careful to make sure that there aren't extenuating circumstances or personal conflicts in the termination. The [234] termination is never done by just one (1) person. There may be one (1) person's signature on the termination slip but, as a matter of fact, more than one (1) person is involved in the termination proceeding.

Q-3. If Mr. Haddock had been so disposed, as one (1) previous Plant Manager has testified that he was, had he been so disposed to go along with Mr. Cummins, would he have had authority to have done so or would that have been in conflict with his authority?

A., When you say to have authority, if he were to go along with it, say, and I became aware of the fact that it was causing problems then he would no longer have that authority, I'd have taken action.

MR. VERNON JOHNSON: Thank you.

MR. THOMAS L. HOGAN: I have no further questions.

MR. BENNETT CLARK: Your Honor, I have no further questions.

MR. JAMES A. CRUMLIN: Thank you so much, Mr. Kuhn.

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[235]

MR. JAMES A. CRUMLIN: I wonder if at this time you would be kind enough to let the Commission go into executive session for five (5) minutes? Then, I guess, I will grant —

MR. THOMAS L. HOGAN: Mr. Crumlin, Mr. Clark and I have agreed before the hearing that we would, in this case, stress the law by submitting briefs, if it please the Commission.

MR. JAMES A. CRUMLIN: We'll get around to that after — let us have an executive session of a few minutes, if you please.

* * * * *

THE HEARING RECONVENED AFTER A FIVE (5) MINUTE EXECUTIVE SESSION OF THE COMMISSION MEMBERS.

MR. JAMES A. CRUMLIN: Gentlemen, we want to thank you for co-operating with us and letting us have a little session here. And at this point we are of the opinion that if [236] you want to submit briefs that we'll grant you time to submit the briefs. And with the briefs we don't feel that arguing the testimony would be necessary in as

much as you're going to submit the briefs. Unless you disagree with that and say so now, because we want each side to feel that we have been fair in what we think the law is, and that we can be convinced one way or the other here if you want to do so by your briefs. We have the evidence here. We think that you both had wide latitudes and we're going to have to act on what has been presented and not determine, as being evidence, whether or not a better case could have been presented by either side. We feel there are some things missing that we would liked to have had, but they're not, so we're going to have to act on what we do have. And your briefs then will be aiding that generalized decision. Mr. Clark, what Mr. Hogan has suggested here, I think is this, along with your briefs we should like to have you submit to us a finding of facts and conclusions of law and what orders [237] you think ought to be entered. Of course, it does not mean, as Mr. Hogan has found out here before, that we will accept them.

MR. THOMAS L. HOGAN: That's correct.

MR. JAMES A. CRUMLIN: Because we have some notions and ideas but we will be as fair as we possibly can be. And I think that if the Stenographer is going to have the transcript ready in two (2) weeks, fifteen (15) days from that date —

MR. BENNETT CLARK: Fifteen (15) days after the transcript is received?

MR. JAMES A. CRUMLIN: Yes, after the transcript is received and we receive these briefs simultaneously, there will be a need for usually fifteen (15), fifteen (15) after that before we can submit the final opinion. I don't think there's a whole lot of law we have on this particular point now but maybe you can convince us otherwise.

[238]

MR. BENNETT CLARK: There's a good bit, Your Honor.

MR. JAMES A. CRUMLIN: Alright, then you will submit what you have found and we will read them carefully and give you our opinion at a subsequent date.

MR. BENNETT CLARK: Your Honor, If I may ask a question, please, since it appears I'm so ignorant with everything and procedure here in particular, I have obtained separately bound copies of a Law Review article, which is particularly well informative to me on this procedure, which I would like to present to the Commission for its consideration but I don't know how I should go about doing that. Whether I should send it in our brief or — I don't have enough to give each member of the Commission a copy — whether I should just send you a copy or if you would tell me how I should send it. I have three (3) copies. It may be that — I

think probably, in all honesty to the opposing counsel it probably should not be submitted to you until our briefs are sent in.

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MR. JAMES A. CRUMLIN: I would strongly suggest that you hold it and submit one (1) copy with your brief and you can point out any of the direct portions of this.

MR. BENNETT CLARK: Whose copy? I presume — do we send copies of the brief to every member of the Commission?

MR. JAMES A. CRUMLIN: We won't put that burden on you.

MR. BENNETT CLARK: Alright.

MR. JAMES A. CRUMLIN: You'll just give opposing counsel a copy and send a copy to the Commission itself. Then the Commission will be responsible for getting enough copies.

MR. BENNETT CLARK: Will the address of all those of the Commission be given to us?

[240]

MR. THOMAS L. HOGAN: Anything for the Commission can be sent to the Commission's office.

MR. BENNETT CLARK: Oh, I see.

MR. JAMES A. CRUMLIN: You send it to the Commission's office and let them be responsible for getting it to them.

* * * * *

THEREUPON THE FRIDAY, MARCH 3, 1972
HEARING IN THE MATTER OF PAUL CUM-
MINS, COMPLAINANT VS. PARKER SEAL
COMPANY, DIVISION OF PARKER-HANNIFIN
CORPORATION, RESPONDENT WAS CON-
CLUDED.

* * * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

PAUL CUMMINS, PLAINTIFF

VS. JOINT MOTION TO SUBMIT
FOR TRIAL AND DETERMINATION

PARKER SEAL COMPANY,
A Division of Parker
Hannifin Corporation, DEFENDANT

CIVIL ACTION NO. 2432

* * * * *

Come the plaintiff and defendant, herein, by and through their respective counsel, and by Joint Motion to the Court, move that the above-captioned action be submitted to the Court for trial and determination on the record; and

It is further moved that the Court grant the plaintiff Forty-five (45) days from the date of the filing of the order of submission to file a brief in support of his claim and that the defendant be granted a period of Forty-five (45) days thereafter in which to submit his brief.

JAMES C. HICKEY
EWEN, MACKENZIE & PEDEN, P.S.C.
2100 Commonwealth Building
Louisville, Kentucky 40202

THOMAS L. HOGAN
205 South Fourth Street
Louisville, Kentucky 40202

Attorneys for Plaintiff

BY _____

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FILED JAN. 24, 1973

UNITES STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

PAUL CUMMINS, PLAINTIFF

VS. ORDER OF SUBMISSION

PARKER SEAL COMPANY
A Division of Parker
Hannifin Corporation, DEFENDANT

CIVIL ACTION NO. 2432

* * * * *

The plaintiff, Paul Cummins, and the defendant, Parker Seal Company, having filed a Joint Motion with the Court to require submission of the above-captioned action for trial and determination on the record; and the Court being duly advised;

IT IS HEREBY ORDERED that the above-captioned action be and is hereby submitted for trial and determination on the record; and

It is further Ordered that the plaintiff, Paul Cummins, shall have Forty-five (45) days after entry of this order in which to submit a brief; and the

defendant, Parker Seal Company, shall have Forty-five (45) days after the submission of the plaintiff's brief or after the time for filing of the plaintiff's brief has expired in which to submit its brief; the within order being subject to any further orders of the Court.

/s/ Bernard T. Moynahan, Jr.
Judge, United States District
Court, Eastern District of
Kentucky

Dated: January, 24, 1973.

A True Copy Attest

/s/ Nancy C. Anderson

* * * * *

ORDER OF SUPREME COURT
OF MARCH 1, 1976

The motion of Trans World Airlines, Inc., for leave to file a brief, as *amicus curiae*, is granted. The petition for a writ of certiorari is granted.